MERCHANT MARINERS DOCUMENTS FOR SEAMEN ON INLAND VESSELS

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COAST GUARD AND NAVIGATION

OF THE

COMMITTEE ON MERCHANT MARINE AND FISHERIES HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

ON

H.R. 1915

A BILL TO AMEND TITLE 46, UNITED STATES CODE, TO REQUIRE MERCHANT MARINERS' DOCUMENTS FOR CERTAIN SEAMEN

SEPTEMBER 8, 1993

Serial No. 103-72

Printed for the use of the Committee on Merchant Marine and Fisheries

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BEFORE THE

SUBCOMMITTEE ON
COAST GUARD AND NAVIGATION

OF THE

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MERCHANT MARINERS' DOCUMENTS FOR SEAMEN ON INLAND VESSELS

WEDNESDAY, SEPTEMBER 8, 1993

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COAST GUARD AND NAVIGATION,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, DC.

The Subcommittee met, pursuant to call, at 2:30 p.m., in room 1334, Longworth House Office Building, Hon. W. J. (Billy) Tauzin (Chairman of the Subcommittee) presiding.

Present: Representatives Tauzin, Hughes, Lancaster, Barlow, Stupak, Pickett, Hochbrueckner, Pallone, Laughlin, Hastings, Lambert, Taylor, Coble, Diaz-Balart.

Staff Present: Elizabeth Megginson, Staff Director; James L. Adams, Professional Staff; Matt Szigety, Coast Guard Fellow; Catherine Tucker, Clerk; Bill Wright, Professional Staff; Doug Cheramie, Legislative Clerk; Sue Waldron, Press Secretary; Harry Burroughs, Minority Staff Director; Cyndy Wilkinson, Minority Chief Counsel; Ed Lee, Minority Professional Staff; Rebecca Dye, Minority Counsel.

STATEMENT OF HON. W.J. (BILLY) TAUZIN, A U.S. REPRESENTATIVE FROM LOUISIANA, AND CHAIRMAN, SUBCOMMITTEE ON COAST GUARD AND NAVIGATION

Mr. TAUZIN. The Chair wishes to apologize for the late start. We got caught with an unannounced roll call. Some Members will be drifting back in. My apologies to the witnesses and those Members who were here before the Chair.

The meeting is called today to receive testimony on H.R. 1915, a bill To Require Merchant Mariners' Documents for Seamen Serving Aboard Inland Vessels.

Chairman Gerry Studds introduced H.R. 1915 on April 28, 1993. The bill's sponsors believe that it will increase navigational safety on our inland waterways.

As you may recall, the subcommittee met in March of 1992 to consider a similar, bill H.R. 4394 which eventually passed in the House but failed to pass in the Senate.

We scheduled this hearing to consider the costs and benefits of extending documentation requirements to all employees aboard inland tugs, towboats, barges, and offshore supply vessels, large inland passenger vessels, and casino vessels.

This bill would require the Coast Guard to document an additional 30,000 workers annually, including deckhands, engineers, cooks,

singers, dancers, and blackjack dealers—I think they are called croupiers. The Coast Guard estimates that it will cost ,ore than $1 million and will require hiring 13 additional employees, all in direct conflict with Al Gore's "Reinventing Government" plans.

I look forward to hearing the views of our distinguished panel of witnesses, and I encourage an open discussion of the merits of this proposal. I ask that each witness summarize this testimony. Your written statements will be made a part of the hearing record. It will be appreciated if you just talk with us—we will talk with you in terms of a Q and A session as soon as you have made your statements.

I would like to, at this time, open the record to all written statements by unanimous consent.

Without objection, so ordered.

That will include the written statement of Chairman Studds, the author of the bill, and Chairman of the full Merchant Marine and Fisheries Committee.

[The statements follow:]

STATEMENT OF HON. GERRY E. STUDDS, A U.S. REPRESENTATIVE FROM MASSACHUSETTS, AND CHAIRMAN, COMMITTEE ON MERCHANT MARINE AND FISHERIES

I would like to thank Chairman Tauzin for holding this hearing. I introduced H.R. 1915 on April 28, 1993, to improve the safety of inland tugs and barges, inland passenger vessels, and offshore supply vessels. This bill is very similar to legislation which passed the House on September 9, 1992.

H.R. 1915 is designed to close a loophole in U.S. maritime safety laws. Currently, individuals employed on merchant vessels of at least 100 gross tons are required to hold merchant mariners documents, with three exceptions. Those exceptions apply to tugs, barges, and passenger vessels operated on our navigable rivers and lakes, and offshore supply vessels.

The Coast Guard has estimated that there are approximately 30,000 undocumented seamen employed on the 3,300 tugs and towboats plying our inland waterways. These tugs and barges carry everything from coal to petroleum products to chemicals. When you add to the mix the 100 inland passenger vessels either in operation or under construction, you can easily see the potential for a major environmental or human disaster.

Requiring personnel on these vessels to obtain merchant mariners documents will improve safety in two ways. First, each individual will have to meet certain minimum criteria in order to obtain a document. These include citizenship requirements, drug testing, and criminal background checks to ensure that the individual has not been convicted of a drug or drunk driving offense. Second, requiring individuals to carry documentation cards allows the Coast Guard to revoke the cards of individuals who commit acts of incompetence, misconduct, or negligence on the job.

This bill will improve maritime safety by preventing individuals with drug and alcohol problems from entering the industry and filtering out incompetent or negligent individuals. I look forward to today's testimony, and hopefully, to a speedy mark up.

STATEMENT OF HON. ALCEE HASTINGS, A U.S. REPRESENTATIVE FROM FLORIDA

I thank you, Mr. Chairman. I would like to welcome today's witnesses from the United States Coast Guard, maritime industry and labor representatives.

The documentation of seamen is an important and necessary tool to assure the Coast Guard that operating vessels have properly screened their employees. In doing so, these vessels will protect themselves from hiring workers that are deemed unsuitable of manning a vessel because of previously committed acts that exclude them from meeting the documentation requirements. By amending Title 46 U.S.C. 8701, we would be expanding the number of vessels that will be required to maintain a documented crew.

The goal of amending legislation on this matter is to improve safety standards and minimize the risk of error by undocumented seamen. I look forward to hearing

from our expert witnesses as to the effectiveness of the existing process of the Coast Guard. If improvements can be expected by the proposed amendment then we should support its implementation.

Once again, I thank you, Mr. Chairman.

Mr. TAUZIN. We would now like to recognize Members who are here, if they have opening statements.

Mr. Laughlin, do you have an opening statement?

Mr. LAUGHLIN. Thank you, Mr. Chairman. I have no opening statement.

Mr. TAUZIN. All right.

Before hearing from our witnesses today, I want to also, today, wish Lieutenant Len Murphy fair winds and following seas. Len has served this committee well as a member of the Coast Guard's House Liaison Office, and we wish him well for his new career.

We will begin the hearing with the testimony of the witnesses, with their understanding that when the Ranking Minority Member, Mr. Coble arrives, we will interrupt in case he wants to make any statement at that time.

We will begin with Captain John McGowan, Chief Merchant Vessel Personnel Division, Office of Marine Safety, Security and Environmental Protection, United States Coast Guard.

STATEMENT OF CAPTAIN JOHN F. MCGOWAN, CHIEF, MERCHANT VESSEL PERSONNEL DIVISION, OFFICE OF MARINE SAFETY, SECURITY AND ENVIRONMENTAL PROTECTION, UNITED STATES COAST GUARD

Captain MCGOWAN. Thank you, Mr. Chairman, and good afternoon. I am happy to appear before you today to discuss the proposed bill concerning merchant mariner documentation requirements. You have my prepared statement, and I will summarize some of the high points of that statement and stand ready to answer any questions that you have.

Mr. TAUZIN. You can hit the low points if you want, too.

Captain MCGOWAN. Title 46 U.S. Code, Section 8701 requires seamen aboard U.S. merchant vessels of at least 100 gross tons to hold merchant mariners documents, except on vessels operating only on the navigable rivers and lakes of the United States, other than the Great Lakes.

Currently, individuals serving on the inland towing vessels or harbor or ocean tugs of less than 100 gross tons and passenger vessels over 100 gross tons operating on rivers and lakes are not required to hold a merchant mariner's document.

However, all towing vessels of 26 feet in length or larger, regardless of their tonnage or where they operate, must be under the control of a licensed master, mate, or operator of uninspected towing vessels.

H.R. 1915 would revise Section 8701 of this code to require seamen on merchant vessels of at least five net tons to hold merchant mariner's documents. It would impact seamen working in the inland towing industry now purportedly exempt from current drug tests and criminal record checks. The bill would also impact on passenger vessels over 100 gross tons including casino vessels that operate on the rivers and lakes of United States and to small offshore supply vessels.

Whether documented or undocumented, all seamen on towing vessels are currently required to undergo preemployment drug testing and are subject to reasonable cause and post-accident drug testing and are also subject to random drug testing if they perform functions that are related to the safe operation of the vessel.

Under Coast Guard regulations, applicants for a merchant mariner's document must appear in person and submit an application, provide proof of citizenship, a letter of commitment of employment, and provide fingerprints for an FBI criminal record check.

Current rulemaking activity to implement the provisions of the Oil Pollution Act of 1990 will also require applicants to make available national driver register information relating to certain offenses committed by the individual. OPA–90 also instituted a five-year period of validity for merchant mariner's documents.

Therefore, all seamen holding MMDs or merchant mariner documents, will be required to apply for renewal of their documents. By requiring seamen on all towing vessels to obtain merchant mariner's documents, H.R. 1915 would accomplish the following: make available criminal record information and national driver register information and provide for sanctions for acts of negligence, misconduct, and violations of law or regulation committed by these seamen.

It is the Coast Guard's position that this proposed bill would provide no significant enhancement to safety in the maritime industry. Our statistics indicate that almost 60 percent of the reported towing vessel accidents involve personnel error. But the statistics do not discriminate between errors committed by licensed or unlicensed crew members.

More than 90 percent of all towing vessel accidents involving personnel error occurred on vessels with individuals already licensed by the Coast Guard. The vast majority of human errors were caused by the individuals already licensed by the Coast Guard or who are in control of the vessel, rather than by undocumented seamen.

The provisions of the proposed bill would result in a significant economic impact on the inland towing and barge industries and passenger vessels over 100 gross tons operating on those waters. It would also impose significant operational expenses in line with user fees.

It would have an impact on Coast Guard resources to receive and process applications. Although we do not know the exact number of mariners that it would potentially affect, we estimate that in order to issue MMDs to an additional 30,000 mariners each year would require an additional 13 Coast Guard personnel at a cost of half a million dollars each year. There be would be a user fee of $35 for each renewal for a total cost of $1 million to the industry. We do not believe that the benefits are commensurate with the costs.

The Coast Guard, therefore, encourages the committee and Congress to fully explore the impacts as well as the expected benefits of this proposed legislation before changing existing law. We oppose the proposed waiver of user fees for effected seafarers as we feel it inequitable.

If user fees are not imposed, then the cost of this additional Coast Guard service would necessarily be borne by other mariners dealing with the Coast Guard licensing and documentation office.

With that, Mr. Chairman, I will close; and I will be happy to answer any questions that you have, sir.

[The statement of Captain McGowan may be found at end of hearing.]

Mr. TAUZIN. Thank you, Captain.

As I indicated, as soon as the Ranking Minority Member arrives, we will interrupt to make an opening statement.

Mr. Coble.

STATEMENT OF HON. HOWARD COBLE, A U.S. REPRESENTATIVE FROM NORTH CAROLINA, AND RANKING MINORITY MEMBER, SUBCOMMITTEE ON COAST GUARD AND NAVIGATION

Mr. COBLE. Thank you, Mr. Chairman. I apologize for the delay. I will be brief.

Gentlemen, good to have you at the panel table with us.

And, Mr. Chairman, I appreciate your having called this hearing today to have our subcommittee reconsider legislation which would require seamen serving aboard inland and offshore supply vessels to obtain merchant mariner's documents from the Coast Guard.

While I advocate upholding and enhancing the safety on vessels on our waterways, I, at the same time, have some concerns about the benefits and the necessity of this legislation. I don't want to place another layer of costly government regulation on our already troubled Merchant Marine if same can be avoided.

One of the few bright spots for American merchant mariners and shipyards, it seems to me, has been the increasing number of inland passenger vessels. I am told that there are currently 25 large passenger vessels operating on the Nation's inland waters and approximately 80 under construction. I would hate to see this growing American industry harmed by unnecessary government regulations, if that can be avoided.

I look forward to hearing—the Captain from the Coast Guard has already spoken. I look forward to hearing the other witnesses who represent the maritime industry—and the labor representatives as well—hearing what they have to say about this matter.

And I thank you, Mr. Chairman, for having called the hearing.

Mr. TAUZIN. Thank you, Mr. Coble.

Just to bring Members up-to-date, we have made all written statements for the record, and we have heard the testimony of Captain McGowan. We have interrupted to give Mr. Coble an opportunity to make a statement.

[The statement of Mr. Fields follows:]

STATEMENT OF HON. JACK FIELDS, A U.S. REPRESENTATIVE FROM TEXAS, AND RANKING MINORITY MEMBER, COMMITTEE ON MERCHANT MARINE AND FISHERIES

Mr. Chairman, I am pleased that the Subcommittee on Coast Guard and Navigation is receiving testimony today on H.R. 1915, a bill to expand the requirement for individuals employed on certain vessels to obtain a merchant mariner's document from the Coast Guard. I support this bill, which would protect the environment on the inland waterways.

Current law requires that captains and pilots employed on tugs and towboats be licensed by the Coast Guard. Also, an individual involved in handling oil or hazard-

ous substances must obtain a document for an advanced rating as a tankerman. This bill would require approximately 30,000 additional seamen employed primarily on inland vessels to obtain a Coast Guard document.

The requirement to obtain a merchant mariner's document allows the Coast Guard to determine which individuals may pose risks to vessel safety. The Coast Guard exercises continuing oversight over seamen required to maintain documents as a condition of employment, and may suspend or revoke a document for cause. Without a documentation requirement, the Coast Guard is powerless to act against a seaman who may commit a serious error or offense.

Furthermore, this legislation addresses a number of the concerns I raised in the last Congress. For instance, it delays the effective date for two years after enactment; it directs the Coast Guard not to collect fees for issuing these documents; and it prohibits the release of any personal information about an individual required to obtain a document. In short, Chairman Studds has gone a long way towards meeting most of the objections previously raised about this legislation.

Mr. Chairman, H.R. 1915 would ensure that individuals employed on our waterways satisfy minimum requirements for employment aboard merchant vessels, and I look forward to favorable action on the bill in the near future.

Mr. TAUZIN. We will now hear from Mr. Joe Sacco, Executive Vice President of Seafarers International Union.

STATEMENT OF JOSEPH SACCO, EXECUTIVE VICE PRESIDENT, SEAFARERS INTERNATIONAL UNION

Mr. SACCO. Thank you, Mr. Chairman. It is a pleasure for me to be here.

Members of the subcommittee, I am Joseph Sacco, Executive Vice President of the Seafarers International Union, AFL-CIO, representing thousands of seamen and boatmen employed on U.S. flag vessels engaged in the international and domestic trades.

I have submitted a detailed statement in strong support of H.R. 1915, a bill to improve the safety of inland tugs, towboats, and barges, and to provide a safe operating environment on the Nation's lakes and rivers and will summarize my remarks.

H.R. 1915 would require mariners to obtain Coast Guard documents as a basis for employment. The bill would extend Coast Guard jurisdiction over thousands of boatmen over whom there is currently no oversight by the agency and would make it easier for employers to determine the safety risks of potential employees.

The SIU continues to maintain—as we did before this subcommittee in the last Congress—that safety dictates the enactment of H.R. 1915. The merchant mariner's document is much more than solely a form of identification. It is a key indication that the holder has satisfied minimal scrutiny by the Coast Guard for an initial document and has remained in good stead.

Since the document is subject to suspension and revocation on various grounds, without such a document it is possible for someone who is deemed unacceptable by the Coast Guard or who has his document suspended or revoked to easily seek and gain employment in that sector of the industry, where such a document is not required.

Expanding documentation will enable the Coast Guard to remove unfit documented seamen working on inland tugs or towboats for cause. In fact, in response to a question during the 1992 hearing, the Coast Guard acknowledged that expanding the documentation requirement will afford the agency oversight over boatmen employed in this sector.

Further, in a final rule published in the **Federal Register** on March 19, 1993, concerning user fees, the Coast Guard enumerated the benefits of its licensing program. According to the agency, "its marine licensing program serves to indirectly enhance general public safety and to protect the environment on or near U.S. waters through establishment of minimum qualification requirements for professional mariners." It ensures that Mariners possess certain qualifications in order to be eligible for the MMD, assures that others they work alongside in the industry meet certain basic requirements such as age and citizenship, and in most cases that they meet minimum experience or training requirements and have passed a professional examination.

Also through background and criminal checks, certain unsuitable persons are excluded from the industry. Though they are less tangible, there are special benefits related to personal security and peace of mind of the individual mariner. The Coast Guard does serve as a professional licensing body which should give a degree of assurance to individual mariners concerning other mariners who work for them and around them.

It is, indeed, unfortunate that opponents of the bill choose to focus on the economic burden the measure may place on the industry in lieu of the safety benefits it will impart and continue to question the need to document cooks and engineers on board certain tugs, tows, and barges.

Although opponents of this legislation cite that deckhands do not exercise, in any manner, operational control of any aspect of the vessel operation, the SIU would like to point out that a licensed tug and tow operator would be hard pressed to navigate the vessel and effectively respond to emergencies such as fire, flooding, medical emergencies, et cetera, without the assistance of trained and dedicated deckhands.

A licensed operator does not function in a vacuum but is dependent upon his crew for their assistance in many vessel functions, as are members of the crew dependent upon one another.

The relationship between safety and crew responsibilities was aptly expressed by the American Waterway Operators in its filing three years ago on the Coast Guard's drug testing regulation. "All crew members aboard commercial towing are in safety-sensitive positions and have safety-related positions" and that the responsibilities and functions of deckhands "effect the safe navigation and operation of the vessel."

The SIU fully agrees with this assessment and believes that their statement reinforces the need for all personnel on these vessels to be documented. It was further argued during last year's hearing that documentation is not a priority issue, but an unnecessary expense at a time when the Coast Guard's operating budget has been cut. We are all aware of the tight budget conditions facing not only the Coast Guard but other government agencies.

However, I suggest that protecting life, property, the environment, and the communities along the rivers from potential oil spills or other catastrophic accidents is certainly a priority. And funding for this purpose is a prudent investment which will yield an impressive rate of return.

There are those who would have you believe that casualty statistics are meaningless since these statistics do not differentiate in the percent caused by documented versus undocumented personnel.

The SIU contends that these figures indicate a significant accident rate, irrespective of fault; and, therefore, should not be summarily dismissed.

Further, the Coast Guard has referred to data which showed that over 93 percent of all towing vessel casualties involve personnel error occurring on vessels with a licensed individual in charge. The presence of a licensed operator in charge aboard a vessel does not eradicate the fact that the cause of these accidents can, indeed, be attributed to either a documented or undocumented individual.

Relative to the proposal by some that Congress await the result of the study on tanker navigation safety standards mandated by the Oil Pollution Act of 1990, before acting on a documentation bill, the SIU contends that this study has absolutely nothing to do with crews employed on tugs in the inland waterways.

OPA and its accompanying conference report are clear in this direction. The focus of the study is on the crews of tankers. Postponement of this legislation will be nothing more than a dangerous delaying tactic.

Lastly, innuendo that the SIU has some ulterior motive for supporting H.R. 1915 is patently disclaimed and its underlying messages resented. The SIU represents both documented and undocumented personnel on the inland waterways, and the fact that the legislation prohibits the Coast Guard to make available to a member of the public any personal information concerning the individual required to obtain a merchant mariner's document should have muted any allegation.

The SIU has been and will continue to be a strong advocate for safety; the safety of its members, the safety of vessels on which its members can earn their livelihood, the safety of the environment, and the safety of the communities along the riverbanks. This is the SIU's sole purpose in supporting and advocating the enactment of H.R. 1915.

H.R. 1915 will also require merchant mariner documents for personnel employed on offshore supply vessels. Some have maintained that there is no basis in fact to expand the requirement for merchant mariner documents for personnel on board these vessels. The SIU totally disagrees with this position.

If the purpose of H.R. 1915 is to truly provide a safer operating environment, and these individuals must be covered. As we understand, H.R. 1915 specifically exempts small operations from the document requirement.

However, legislation will impact other passenger and gaming vessels which ply the Nation's rivers and lakes which are not exempted from the legislation as drafted or by existing laws.

According to an industry report, the riverboat gaming industry is moving full speed ahead. Currently, there are 25 casino vessels operating in three States with two additional States coming on line with a boat this year. This translates into hundreds of thousands of additional passengers being carried on these vessels. For the safety of these passengers, crews should be documented and trained.

Again, safety must remain the subcommittee's overriding consideration.

In conclusion, to ensure safe and ecologically sound transit of the Nation's waterways by these commercial vessels and to protect our marine environment from the damage of avoidable oil or other hazardous cargo spills, the SIU recommends expedient enactment of the legislation being considered here today.

This action would be an appropriate addendum to the goals and objectives of the Oil Pollution Act of 1990. That concludes my statement.

Mr. TAUZIN. Thank you very much. We will go through a round of questions after everyone has had a chance to present their statement.

[The statement of Mr. Sacco may be found at end of hearing.]

Mr. TAUZIN. Mr. Joe Farrell, President of American Waterways Operators, we welcome you.

STATEMENT OF JOSEPH FARRELL, PRESIDENT, AMERICAN WATERWAYS OPERATORS

Mr. FARRELL. Thank you, Mr. Chairman. We appreciate being invited to testify again on this.

We are back again to try to persuade you that the emperor really has no clothes on. Nothing has changed since this issue was subject of a hearing in the last Congress, except one thing that I think you all ought to take note of, if you haven't already. And that is that we have a President, a relatively new President, who has pledged to make the government work better for the people. And it strikes us that this bill runs contrary to that pledge, that goal of President Clinton.

Let's take a page from the President just for a moment and look at what this legislation purports to do: increase marine safety.

First of all, you have heard the testimony of the Coast Guard, vested by the Congress with responsibility for marine safety in U.S. waters. Pretty clear where they stand on the legislation. They are the experts, empowered by you to make these kinds of decisions and recommendations.

Second of all, examining the features of the legislation, five of them are bureaucratic matters only: production of photographs, Social Security card, proof of employment, birth certificate, that sort of thing. The remaining two are already in place with respect to our industry at least. One is the reference to the FBI to see if there are any drug offenses. My goodness, we have a full panoply of requirements as relates to drug testing: preemployment, post casualty and so forth.

Incidentally, we appreciate Mr. Sacco's reference to AWO's support of drug testing for all the personnel on a vessel for precisely the reasons he stated; that people, like dancers and piano players and cooks and laborers and deckhands, could be involved in flood casualties or fire casualties or emergency medical matters, and drug testing is clearly something that lends to increased safety on the waterways. Finally, the review or check of the National Driver's Register to see if there are alcohol-related driving offenses. As

you all know, alcohol is prohibited on our vessels. It is disallowed. It is not permitted.

In our view, I guess, the most astonishing feature of this legislation is that it hasn't fallen of its own weight. This strikes us as much ado about nothing. It involves spending taxpayer's money for little or no benefit.

I will give you an analogue, a sea story. As some of you know, I spent a good part of my life in the nuclear submarine Navy working for Admiral Hyman George Rickover. And my first assignment was the Seadragon. While she was on her maiden sea trials, I was chief engineer. We received orders to make a polar trip; and in partial preparation for that polar trip, I was detached and sent to the *Nautilus* which was in the Portsmouth Naval Shipyard undergoing first nuclear refueling. *Nautilus* had just completed a polar trip. That overhaul and refueling was scheduled to take six months.

When I reported on board *Nautilus,* she had been there 13 months, and there was still a lot of work to do. As I sat down with the skipper, a person you may remember, then Lieutenant Commander Lando Zech who recently retired as Chairman of the Nuclear Regulatory Commission, I said, "What do you think of the Portsmouth Naval Shipyard?" He said, "Well, Joe, they do poor work, but they are slow."

Well, we have the same thing here. Here is a President who 24 hours ago was waving a book with a cover that said "More Government Effectiveness and Less Cost." If you are going to adhere to those principles, this bill ought to be consigned to the dust bin.

Thank you Mr. Chairman.

Mr. TAUZIN. I am sure he wasn't talking about the Congress.

Mr. FARRELL. No. Goodness no.

[The statement of Mr. Farrell may be found at end of hearing.]

Mr. TAUZIN. We are pleased to welcome Mr. Eric Scharf, Executive Director of the Passenger Vessel Association.

STATEMENT OF ERIC G. SCHARF, EXECUTIVE DIRECTOR, THE PASSENGER VESSEL ASSOCIATION

Mr. SCHARF. It is hard to say much more than Joe Farrell did in any more direct fashion other than to say that our members, the 350 vessel operating companies that belong to our association, oppose this bill in the strongest terms possible.

We believe that it adds nothing to the safety complement that is provided to our clients, some eight million people each year who ride on passenger vessels throughout the U.S., and particularly those on the boats that would be affected here.

We have identified through Coast Guard resources that there are probably about 70 vessels right now—with the growth of the gaming portion of the industry that will probably go to 100 or so that will be affected. There is probably a conservative estimate of 5 and as many as 10,000 people who might be affected by this bill.

The concern on our perspective is certainly cost, but it is also the general inconvenience. It is hard to imagine a town like Peoria, Illinois, where they are a good six, seven hours from the exam center, getting 18-, 19-year-old deckhands or wait crew who have been promised a job through the economic development activity to

then have to drive seven hours to Toledo to have—submit their fingerprints and get this particular card when they can go down to the restaurant down the street and work there.

So it adds nothing, particularly, to our understanding of safety; and it is going to make it more difficult for people to participate in this industry.

That is really all I have got to say right now—we are happy to answer some questions later on– other than to say that this adds nothing to the passenger vessel industry's safety program. Thank you.

Mr. TAUZIN. Thank you very much, Mr. Scharf.

[The statement of Mr. Scharf may be found at end of hearing.]

Mr. TAUZIN. Our final witness on the panel is the Associate General Counsel for Maritrans, Arthur Volkle, Jr.

We appreciate your testimony.

Mr. VOLKLE. Thank you. Perhaps uncharacteristically for a lawyer, I hope to be brief.

Mr. TAUZIN. We have a t-rex monster waiting for you if you don't.

STATEMENT OF ARTHUR J. VOLKLE, JR., ASSOCIATE GENERAL COUNSEL, MARITRANS

Mr. VOLKLE. We come before you with somewhat of a different perspective. We are a large—coastwise—operation. We own a fleet of 35 tow boats and petroleum barges running oil up and down the East Coast.

And it seems to us that an emphasis on personnel and personnel safety and competence is really where we all ought to have our attention focused. Most accidents on the water are caused by personnel error, not equipment. And so we ought to be focusing on personnel.

It seems surprising to us how everyone saying that merchant mariner documents have absolutely no relationship to safety. One wonders why we have a merchant mariner document program at all. But it seems to us that, theoretically, it does provide some Coast Guard oversight and will enhance safety, because, again, theoretically, people who get merchant mariner documents undergo criminal checks and undergo national driver register checks; and the Coast Guard can exercise some oversight over the conduct of these individuals once they get the job and get on the water. I say theoretically. I want to emphasize that.

One thing we recently discovered was that even though OPA requires the Coast Guard to do national driver register checks before issuing a merchant mariner document, we recently learned that the Coast Guard, even today, is still not doing that. We think that that is an important contributor to safety, and we would hope that the Coast Guard will implement that requirement as soon as possible.

So for those reasons, it seems to us that this really imposes a minimal burden on the industry and on the individuals. I mean, we are talking about $35 for a document application fee, which does not seem insurmountable and it does give the Coast Guard the abil-

ity to exercise a little bit more control over the conduct of the people that work on the water.

Thank you.

Mr. TAUZIN. Thank you very much, Arthur.

[The statement of Mr. Volkle may be found at end of hearing.]

Mr. TAUZIN. Let me get a quick round of questions.

For the benefit of the Members, we will recognize Members in the order of their first appearance at the committee, since some of you came earlier before the vote.

Mr. Barlow first, Mr. Laughlin, and, Mr. Lancaster, we will honor the fact that you got here early.

Just a few questions, first of all, to Captain McGowan. Doesn't OPA-90 currently require that employees in safety sensitive positions are subject to drug tests and a check of the national drivers' registry?

Captain MCGOWAN. Yes, Mr. Chairman, it does.

Mr. TAUZIN. And that is all safety sensitive positions?

Captain MCGOWAN. That is correct.

Mr. TAUZIN. How is that defined or interpreted by the Coast Guard?

Captain MCGOWAN. As far as the drug testing parts of it, it would virtually involve almost every duty on a tugboat, including lashing or unlashing barges, engine room, above deck, related to anchoring or mooring, steering the boat, for instance.

About the only duty that I can think of that comes right to mind that would not be affected is someone that is purely a cook or a food server and performs no other functions on the vessel. That is the case with tugboat operations that I am familiar with. Everyone wears a different hat.

As far as the national driver register is concerned, sir, for anyone coming to apply for a individual merchant mariner document or a license, they have been asked since 1989 to sign a national driver register waiver form which gives, in writing, the Coast Guard permission to check NDR records when we get the regulatory authority to do that. We now have, as you observe, the statutory authority. We have not published the regulations.

Mr. TAUZIN. When are those regulations likely to be published?

Captain MCGOWAN. I don't work with those daily, but I believe this fall the notice of proposed rulemaking is targeted to be published. That comes on the heels of a somewhat intricate process.

The national driver register statutes prohibit Federal agencies, in this case the Coast Guard, from directly accessing their information in their data bank. We are required—and this carried through when OPA-90 was passed, to access that data bank via a participating State.

Mr. TAUZIN. I got you. It would be helpful if, for the record, you would give us the status of that process and the status of the legislation.

H.R. 1915 says no user fees, and yet you say that the Coast Guard is going to impose a $35 user fee.

How do you do it? And where do you do it?

[The following was received:]

NATIONAL DRIVERS' REGISTER

The National Traffic Safety Administration of the Department of Transportation maintains the National Drivers' Register. Presently, the statutes do not allow other Federal agencies direct access to the National Drivers'Register. With the National Traffic Safety Administration's assistance, the Coast Guard has identified a cost effective and user friendly way to assess the National Drivers' Register within the existing statutory restraints. The access will be through the Commonwealth of Virginia. The Notice of Proposed Rulemaking has been prepared and is in clearance with the Coast Guard Regulations and Administrative Law Branch. The Coast Guard expects this Notice of Proposed Rulemaking to be published in late 1993 or early 1994. Depending on the public comments, the Coast Guard envisions the Final Rule to be published in late 1994.

Captain MCGOWAN. The most difficult part of doing it is how to sort out the difference between one merchant mariner document that would be involved with the inland towing industry or employed on large passenger vessels and all of the other merchant mariners.

Mr. TAUZIN. What you are saying is that if you were not allowed to charge directly for this service, that you are going to raise user fees somewhere else where you are authorized to do it?

Captain MCGOWAN. We are required by statute to cover our costs, sir. And if it is not borne by this population, that means others will bear the price of it.

Mr. TAUZIN. In essence, your answer is that regardless of the language that says you may not collect a fee or charge for any service related to a merchant mariner's document required to be obtained under this act, you would, nevertheless, by other statutes, be required to raise those fees from some other group of mariners for other services?

Captain MCGOWAN. That is correct, sir. And how to do that and sort out the difference of who would be charged the fee and not charged a fee is a very, very difficult issue, sir.

Mr. TAUZIN. Would you prefer that you be allowed to collect the user fee directly if you are required to document these workers?

Captain MCGOWAN. I am not sure what you mean.

Mr. TAUZIN. I am asking you, would you prefer that this prohibition be deleted from the bill? If you are going to have to collect the $35 from some, would you prefer going through that arduous process of finding some other group of mariners? Or would you prefer to charge it directly for this service?

Captain MCGOWAN. We would prefer to charge it directly as we are with other mariners and be equitable.

Mr. TAUZIN. I just received a letter from a former employee who now works for Delta Steamboat Company, Delta Queen in New Orleans. He points out that applicants will not be allowed to get a document if they have been convicted of a DWI and may lose an MMD after receiving a DWI. I am not advocating that we say it is OK to get a DWI. But the question is, should the DWI conviction prevent someone from being a cook or cocktail waitress, particularly as more casino vessels enter the industry?

Maybe we could have a give and take between Mr. Sacco and Mr. Farrell on that point. Should we say to someone who is going to be a cook or a waitress or an entertainer aboard a vessel that you can't work when you have a DWI when we don't necessarily say

the same thing to somebody on other modes of transportation, for example a train?

I don't think we tell waiters and waitresses on trains that they can't work if they have a DWI, certainly the engineer, but not necessarily service employees. Would you like to comment?

Mr. SACCO. The concept, first of documentation, is not just for minimal scrutiny before the Coast Guard for the purpose of identification but also looking at, again, strictly from the standpoint of safety, and also identifying those workers—how do you hold any leverage over any worker—the seamen's document, once that worker goes to work aboard a boat with that document? He knows that once he has violated the laws and once he is found to be incompetent or irresponsible or whether it be drugs or alcohol or incompetence—he knows the danger of losing those seamen's papers are going to cost him his job.

But in the same process, it is also—it also gives the employer an opportunity to have greater control over his employees and also improve the safety aboard the vessel as well as the quality of the worker aboard the vessel.

Mr. TAUZIN. Let me be specific. I don't think the law says to someone who wants to work on a train—not operating a train, simply serving drinks or waiting on passengers for meals—that if you get a DWI, you lose your job or we can't hire you. But apparently this law would do that insofar as these new casino vessels are concerned.

Is that your intent? Do you really want that to be the case?

Mr. SACCO. With the merchant mariner document, with the seamen's document, if the worker is found to violate, for any irregularities, irresponsibility, for drunkenness, he can be suspended. Those papers can be pulled, temporarily suspend his employment to rehabilitate himself, and get himself back——

Mr. TAUZIN. What I am asking is that once you get a DWI, you can't ever go back to work. That is a tough question.

Mr. SACCO. As it stands right now you can get a DWI—and I don't have the statistics, but I am sure that people right now, with the way the industry is underregulated for the undocumented worker, I am sure there are a lot of cases where you will find people working aboard where they are undocumented. That is the purpose of having the documentation.

Mr. TAUZIN. Mr. Farrell? Let me hit it again. Is it fair to say to people that are going to work as waitresses and croupiers at a blackjack table or entertainers that you can't get a job or keep a job because of a DWI when we don't do the same for service workers in other areas?

Mr. FARRELL. I think the question begs the answer, really. In my view, conviction for DWI should not, in and of itself, finally work against a person getting these kinds of jobs on vessels.

It also needs to be borne in mind that there is a certain inherent assumption in these kinds of questions, Mr. Chairman, that the only way—or the best way to resolve these matters is to have the government do it. And it assumes that the companies, that the private sector has no interest in safety, either for moral or economic reasons. That is really an invalid assumption.

It also overlooks something that I mentioned in summarizing my testimony, that alcohol is prohibited on vessels. We take that seriously.

I think, in sum, the answer is, no.

Mr. LAUGHLIN. Mr. Chairman, would you yield?

Mr. TAUZIN. I would be happy to yield.

Mr. LAUGHLIN. Mr. Farrell, if you find an employee in any capacity on one of your boats with alcohol, do you fire them?

Mr. FARRELL. Understand that I am not in charge of operational personnel. However, the many stories that I have heard from our members, the answer to your question is, yes. I have never heard a case where somebody—a seamen found drunk on a vessel was not dismissed.

Mr. LAUGHLIN. My question is not drunk. That is a further step for the mental status.

My question is within your companies of your association when you find an employee with booze on or about his body in a bottle, you fire them summarily?

Mr. FARRELL. Same answer; right.

Mr. PALLONE. Mr. Chairman.

Mr. TAUZIN. I am going to yield to Members in the——

Mr. PALLONE. I wanted to follow up on your question. Is it possible under the act—again, I only have the definition—is it necessary that everyone be defined as a seaman? Or is there precedent for making exceptions for cocktail waitresses, et cetera?

Mr. TAUZIN. The problem that the Chair is trying to point out is that the bill doesn't make exceptions; and all workers aboard the vessel would be documented according to the provisions.

And the question I am asking is whether or not there ought to be a differentiation as to what the law currently provides and what H.R. 1915 would require.

That completes my round. Before I do that, anybody else want to comment on the questions that I asked?

Mr. VOLKLE. Just a quick comment. As I look at the law, the fact that you have a DWI does not mean that you must lose your merchant mariner's document.

All the law says is that the Coast Guard has to check the national drivers' register. It doesn't say that if they discover a DWI, that they must revoke your document. And the Coast Guard, presumably at this point——

Mr. TAUZIN. Let's find that out. We have the Coast Guard here.

Captain McGowan, how do you interpret this bill in that regard? The letter that I have indicating that this one company, at least, uses it as a requirement that you not have a DWI.

How do you see it under this bill?

Captain MCGOWAN. First off, Mr. Chairman, your interpretation of the bill, that it is blanket—sets up no gradations, everyone would be covered under this bill and have an MMD.

There are two cases—and we are staying with alcohol. If someone denies that they have had a conviction in the past, and we check the NDR—and when I say "deny," they do that in writing on their application—and we find out through a check of the NDR that they have, in fact, had a conviction, their document is not good, we take it back on the spot.

Mr. TAUZIN. How about if they admit it?

Captain MCGOWAN. If they admit it, we evaluate it. And the details will be out in the fall.

Mr. TAUZIN. So we don't know?

Captain MCGOWAN. We don't know exactly what the standards are going to be, no, sir.

Mr. TAUZIN. And under the law, you are not allowed to give that information to the employer; right?

Captain MCGOWAN. National driver record would be retained information between the seaman and the Coast Guard.

Mr. TAUZIN. So if you don't find evidence of a DWI, you can't share that information with the employer under this bill?

Captain MCGOWAN. That is correct.

Mr. TAUZIN. I turn to the Ranking Minority Member, Mr. Coble, for additional questions.

Mr. COBLE. Thank you, Mr. Chairman.

Mr. Farrell, in your written statement, you conclude that the bill's new merchant mariner documentation requirements will affect deckhands and cooks who have nothing to do with the operation of vessels. And, generally, I agree with that.

I have known situations, as I am sure you all have, where cooks found themselves in the wheelhouse at the wheel, deckhands the same thing. But I think, generally speaking, you are right about that. I think generally speaking deckhands and cooks would not be operational personnel.

Captain McGowan, do you disagree with what I just said, interpreting what Mr. Farrell said?

Captain MCGOWAN. As far as tugboat operations, I think you have described it accurately.

As far as large passenger operations, those deckhands could get involved in safety functions easily. But it depends how the owner uses his crew.

Mr. COBLE. Mr. Sacco, let me hear from you on that question.

Mr. SACCO. I believe what the Coast Guard described exactly. But, again, I want to emphasize from the standpoint of safety—and that is where I am coming from very strong today—is that the captain——

Mr. COBLE. And that is why I am asking the question.

Mr. SACCO [continuing]. the captain is the master of the vessel, and he is responsible for the safety of the crew and the vessel.

However, there are certain times where the deckhand might be involved with certain aspects when the vessel is under way, when the vessel is tying up, and then when it comes—the ultimate time, when something happens aboard the boat. What to you do in an emergency situation, because the boat—normally the boat runs 24 hours a day, seven days a week. It is not like a shore side situation. So anything can happen.

And when the deckhand—he is on watch, he is under the direction of the captain aboard the boat. But there are times when he can be called up to the bridge by the captain. There are time when's the cook will be called down. It is a situation when all crews and all deckhands and the entire crew is called by the captain in certain situations.

But under normal circumstances, the captain is the one who is responsible, who handles the tug and the barge as a unit. But there are times when the crew is going to be called on.

Mr. COBLE. Mr. Sacco, let me ask you a further question. What is the seafarer's posture or view on requiring chambermaids, card dealers, entertainers, to have documentation?

Mr. SACCO. I would have to say in those areas—this is a new industry—that decision, I believe, would lay with the Coast Guard in most cases.

On the specifics of the employees that would be working in this case on a riverboat, a gaming boat, I believe that discretion there—we would preferably, as a union would like to see for the purpose of safety, we would like to see everybody documented for safety reasons.

But, ultimately, I think that the Coast Guard will ultimately make that decision.

Mr. COBLE. I was going to say, I guess these questions that I am asking are likely subject to personal interpretations.

To Captain McGowan, let me ask you, what would be your response to the question I just put to Mr. Sacco?

Captain MCGOWAN. My response, my reading—our reading of the bill as proposed, we will not have the ability to decide. The wording says anyone on that type of a vessel will have one. So we have no flexibility the way the wording is right now.

Mr. COBLE. Captain, in your testimony you indicated that cost to the Coast Guard would be a half million dollars. Do you have any idea what the added cost would be to the affected industries?

Captain MCGOWAN. The half million dollar figure, Mr. Congressman, is a best estimate. We think it is very conservative. And that is to put merchant mariner documents in the hands of 30,000 seamen.

That number could easily double if we include passenger vessels, casino boats, and offshore supply vessels. And we just wanted to put down a very conservative number. The cost, again based on that 30,000 dollars figure, direct cost to industry, we estimate as a million dollars a year, sir.

Mr. COBLE. Mr. Farrell, you indicated in your written statement—or you alluded to raising of costs several times. Now we mentioned earlier that the Coast Guard is not going to be able to charge a user fee for these specific documents.

I presume, Mr. Farrell, what you had in mind when you talked about additional costs was the cost of administrating.

Is that what you had in mind. Primarily?

Mr. FARRELL. Yes, sir.

Mr. COBLE. And would you have any idea how much that would be?

Mr. FARRELL. I don't. I am not sure anybody does. It would include the possibility of a company reimbursing a candidate for travel and the administrative costs if the user fees do become a part of the bill as the Coast Guard is apparently suggesting.

Mr. COBLE. Mr. Scharf, would you have an idea? Would you echo that?

Mr. SCHARF. Yes, I would basically echo that.

You have the boat in Peoria needing to get 200 MMDs. There is the option of bringing a Coast Guard crew down there at the expense of the company or getting people to go to the recreational exam center. Usually, the company would reimburse employees for any expense related to that. And there is the time involved also for the personnel to go and get that.

Mr. COBLE. I got you.

Mr. Volkle, I have unintentionally ignored you. Do you want to add anything to the questions that I have put to the other witnesses?

Mr. VOLKLE. Just that, as we look at the bill now, it would prohibit the Coast Guard from collecting either from the individuals or from anyone else, the money to administer the program.

So, again, speaking from the standpoint of a generally larger operator where our folks are required to have documents, either by law or by company policy, we don't see this bill as giving the Coast Guard the authority to take the cost of administering this program and spreading that out among the other people to whom they can charge user fees.

As we see it, basically, this is a Coast Guard budget item. And it just—looking at the cost per individual, it doesn't seem to be a tremendous cost to give the Coast Guard some exercise or control from a safety standpoint.

Mr. COBLE. Thank you, Mr. Chairman.

Mr. TAUZIN. Thank you Mr. Coble.

We recognize Mr. Barlow. You are up first for questions.

Mr. BARLOW. Thank you, Mr. Chairman. My hometown of Paducah, Kentucky, a community of approximately 30,000 persons, is home to 50 companies that operate towing and repair operations.

Towing operations based in and crewed from Paducah, Henderson, and the western Kentucky vicinity account for over 10,000 jobs.

Naturally, matters involving worker safety and paperwork are very important to my constituents. I am concerned that the proposal to require inland waterway employees to be, quote, documented, closed quote, will serve no constructive purpose.

We have already heard the colloquy here as to cooks and other personnel of a similar nature. Why have these documents? What constructive purpose is served here?

We see coming out of the floods, high standards of seamanship as the inland waterways and the Mississippi valley and tributaries have been under extreme conditions and the barge companies, and the crews serving on those barges have performed monumental service in keeping with safety and minding the Coast Guard and paying attention to the needs or maintaining the equipment during these floods.

These are expensive installations on the rivers of the Nation. The equipment is very expensive. And untrained, unqualified personnel are not the people that the companies want to have anywhere near this equipment. Companies are not in the business of putting their equipment in jeopardy.

I fear that this proposal will heap unnecessary red tape on the barge industry employees. We do not need additional red tape from the government. We have enough, indeed, we need less.

Thank you, Mr. Chairman.

Mr. TAUZIN. Thank you, Mr. Barlow.

And I recognize Mr. Laughlin.

Mr. LAUGHLIN. Captain McGowan, as I understand the situation now, anybody on a tug operation that is operating only in the inland waterways of our country are not required to be documented as we are talking about this legislation; is that correct, any crew member?

Captain MCGOWAN. I may have lost you in a double negative.

Mr. LAUGHLIN. As I understand the law today, there are no personnel on any tugboat tow operation in the inland waterways of our country required to have the documentation being addressed in this legislation; is that correct?

Captain MCGOWAN. That is correct, sir.

Mr. LAUGHLIN. I thought that was correct.

My question is: When there have been accidents involving tugs and other boats operating on the inland waterways, the Coast Guard investigates those when there is either loss of life or property damage to some amount, I suppose?

Captain MCGOWAN. That is correct. $25,000 is the property damage figure.

Mr. LAUGHLIN. Do your investigations the categories of causes of these accidents?

Captain MCGOWAN. Yes, sir, depending upon——

Mr. LAUGHLIN. The categories?

Captain MCGOWAN. Depending on the size of the occurrence and the investigative team, they will identify an apparent cause, is the term we use, Mr. Congressman.

Mr. LAUGHLIN. Is there a category that would be addressed by this legislation? Is there a category of cause of accident in your current investigative procedures that would be addressed by this legislation that we are considering before the subcommittee now?

Captain MCGOWAN. Absolutely, sir. If there were——

Mr. LAUGHLIN. And what are those categories? That is what I want to get to. What are those categories?

Captain MCGOWAN. It would be several. Fire, explosion, someone falling and slipping if they lose more than three consecutive days on the job requiring medical care; we will investigate and then determine, from the result of the accident backwards, the cause of the accident.

Now that may be, as in the vast majority of cases, accidents that we have investigated in the 10-year period that I touched on in my statement. We are normally looking at a collision, a grounding, or an allision, a vessel striking an immovable object is the buzzword for that.

Mr. LAUGHLIN. You probably don't have this information, but I think it would be helpful if you would provide the Chairman, not all the accident causes that you have, but those that would be addressed by this legislation if it were to become law.

[The following was received:]

CASUALTY INFORMATION

According to casualty information which the Coast Guard Marine Investigations Division has available, very few casualties involve unlicensed personnel on inland

vessels. There are 44 causes of casualties which involve human factors. Only 2 of the 44 causes appear in our statistics. They are: (1) error in judgement and (2) operator error resulting in groundings, collisions, and allisions. There were 8,954 casualties on inland vessels from 1981 through 1991 which involved human error. Of these, 8,296 had licensed persons-in-charge which were listed as responsible for the incidents; 202 involved unlicensed personnel; 161 were unmanned barges; 41 were not classified; and 21 were not applicable to any previously listed categories. Only 2% of the groundings, collisions, and allisions were caused by unlicensed/undocumented personnel.

Captain McGOWAN. I want to make sure—we will be more than happy to forward it, but I want to make sure that I send you the right information.

Mr. LAUGHLIN. If there are no accidents that are going to be prevented by implementing this law, it raises the question, why do we need it. But if there is a long series—if you have a long series of car wrecks caused by people running over 100 miles per hour on neighborhood streets, it would give you a clue that you need to look at speed limits and some law enforcement.

That is where I am coming from. If you will look at your accident report statistics that would be covered or addressed by this legislation, I think it would be helpful for us to know what that is.

Captain McGOWAN. Yes, sir. We have information on better than 90 percent of the casualties in the towing vessel industry—and the numbers are very, very similar on the offshore supply vessel industry—better than 90 percent of those casualties have been the result of an error by the operator, who already has a Coast Guard license on a tow boat and normally has resulted from a grounding, a collision or an allision.

Mr. LAUGHLIN. Mr. Chairman, did you follow what my question was?

Mr. TAUZIN. I apologize. I did not. I was preparing another question.

Mr. LAUGHLIN. My request is that the Coast Guard furnish us the statistic or the accident report findings that they have that would be addressed by this legislation, whatever those statistics meant. I think that it would be some guidance to us as to——

Mr. TAUZIN. Captain McGowan quoted a 90 percent figure that is not in your written testimony. It would be probably good for you to document that for us.

Mr. LAUGHLIN. If they are already documented, that is one thing. But if the people that are involved in causing accidents, loss of life, property damage that exceeds $25,000 are already documented, I think we need to know that. And that would be influential.

That is all the questions that I have, Mr. Chairman, thank you.

Mr. TAUZIN. Thank you.

Staff informs me that we received a good deal of this information last year when we took up the bill. Perhaps we can update it to make the record complete. Thank you.

We will now have Mr. Stupak ask questions. Let me personally express my appreciation to Mr. Stupak for the agreement we reached regarding the authorization bill that this matter would come up separately.

As you and other Members know, particularly the Chairman of the full committee, this subcommittee Chairman has always been amenable to committee Members having a chance to not only get

hearings on their bills but to get markups where there is a sufficient expression of interest by Members.

Obviously, this bill is one with a great deal of interest in it. We are pleased to not only have this hearing at your request, but, as I said earlier, we will follow it up with the necessary procedures for markup.

Mr. Stupak.

Mr. STUPAK. Thank you, Mr. Chairman. I was going to thank you for expeditiously holding these hearings. Both myself and the Chairman had asked that you hold these hearings to move this bill along.

From the testimony today we have heard about this growing industry. I think the requirements of this act is a minimal intrusion on people to provide safety throughout our country for shipping on our inland waterways.

Mr. Chairman, a question if I may. It may be more directed at you or staff, but when this bill was passed out of this committee and out of the House in 1992, was there all these concerns about the cooks, waiters, dance girls and blackjack dealers?

Mr. TAUZIN. Croupiers.

Mr. STUPAK. You guys down South talk funny anyway. Did that concern come up then?

Mr. TAUZIN. Yes, it did.

Mr. STUPAK. How was it addressed then?

Mr. TAUZIN. There was a difference at the time, Mr. Stupak. That was passenger vessels—were not covered by the bill last year. The addition of passenger vessels in this bill has accentuated that concern because, obviously, there will be a lot more cooks, a lot more entertainers, a lot more waitresses on passenger vessels than there would have been on simple transit vessels.

Mr. STUPAK. I see. When I look at the act, Mr. Chairman, especially 10–503, when they talk about exhibiting merchant mariners documents, each place where they say you must exhibit, they talk about seamen exhibiting it, not cooks or blackjack dealers or things like that. I think we are really trying to overextend the purpose of this bill by having blackjack dealers and everybody else have these licenses. I don't think that is the intent or the purpose of it.

Mr. TAUZIN. You may want to pursue this with the Chairman of the full committee, but it may be important to the movement of this legislation to consider some redress to make that very clear because, obviously, the Coast Guard is on record as testifying that their interpretation is that it does cover all these people.

If you want to make it clear that it does not, perhaps a redraft would be called for.

Mr. STUPAK. Right. I don't think I can speak for the Chairman. Therefore, I will not interject that part.

We have had two figures tossed around here today. Mr. McGowan has $35 and Mr. Scharf has $52 to license people. What will it be closer to, $35 or $52? In the testimony today we have two different figures.

Mr. MCGOWAN. I believe the difference in the figure, if my addition is correct, is a $17 FBI fingerprint fee.

Mr. STUPAK. So the total cost then would be $52?

Mr. MCGOWAN. That is correct, sir.

Mr. STUPAK. Does the Coast Guard have any idea where they would attempt to pick up this $52? Where would you shift this to if you are not going to do it under 8701? Where else would you pick it up?

Mr. MCGOWAN. I don't have an answer for that, sir. We would have to work that out in a regulatory action upgrading user fees.

[The following was submitted:]

COST OF LICENSING

Initially, the costs would not spread to other mariners. The cost of this service would be paid by the Coast Guard and ultimately the general taxpayer. The Coast Guard revisits the fee structure each year to insure that the fees collected cover the costs of the services provided.

Mr. STUPAK. The last time when the bill went through the House was there any idea given where that money would be recouped then?

Mr. MCGOWAN. I don't have that historical knowledge, sir.

Mr. FARRELL. It was a user fee in the last bill. I think the answer, Mr. Stupak—correct me if I am wrong, Mr. Chairman—but I think the bill we considered last year included a user fee. This one does not.

Mr. TAUZIN. That is correct. H.R. 1915 precludes a user fee for this service. The bill last year did not have this prohibition in it, as I recall.

Again, I want to point out, Mr. Stupak, the Coast Guard has testified that they are prepared to raise other user fees on another class of individuals if they cannot do it directly for this service.

Mr. STUPAK. With that, Mr. Chairman, I have no further questions, other than to say, based on the hearings today, I still continue to support it. I will get back with the Chairman and, hopefully, we can move this bill forward. Thank you.

Mr. TAUZIN. Thank you, Mr. Stupak.

I have a couple of final questions and this, I think, goes to the heart of the debate here. I would like you all to think about it and to respond individually as we close the hearing.

Is there a link between the professional competence of an employee and the possession of a merchant mariners document? It is a central question because safety is a real concern here. I think it was Mr. Scharf who testified that, obviously, it does have some meaning. What meaning does it have? Is it just like a social security card? Is it an ID? Is there a link between professional competence and the possession of a merchant mariners document?

Mr. Sacco first.

Mr. SACCO. Mr. Chairman, there is a link between documentation and safety. With the employee, he gets his seaman's documents. It is a form of identification, and it comes under the scrutiny of the United States Coast Guard. More importantly, it is also another screen test for this employee.

When he holds those merchant mariner's documents he will be judged on his performance. Performance means if he violates any of the safety laws as mandated by the Federal laws, by the Coast Guard, if he is found to be negligent on the job, if he is found to be incompetent, those papers can be pulled, which means he is sus-

pended from employment in the industry based upon the severity of the penalty that he commits.

In other words, if he has the seaman's documents, once he is documented then he goes to work. And if he commits any type of a act or if he commits any irregularities, incompetence, drunkenness, drugs, those papers can be pulled. He is suspended. It is a way of clearing out and getting rid of a lot of the bad apples.

This ties very strongly into safety aboard the vessel.

Mr. TAUZIN. Captain McGowan, is there a link between professional competence and the possession of a merchant mariner's document?

Mr. MCGOWAN. What this proposed bill would rule out in terms of casualties in the future would be casualties caused by a person with the drunk driving record or with a bad criminal record. I know of no direct link, Mr. Chairman.

On the other hand, there are gradations of merchant mariner documents. The levels that we are talking about here is probably a deck hand or their counterpart in the engine room would be a wiper. There are no experience requirements and no training or knowledge requirements in order to qualify for that lowest entry level, as we call it, merchant mariner document.

For the purposes of another person that was testifying it serves as an ID. Jurisdiction is a real issue.

Mr. TAUZIN. Mr. Farrell, is there a link between professional competence and the possession of a merchant mariner's document?

Mr. FARRELL. I am sorry that my testimony was not clearer, I guess. We see no link.

Mr. TAUZIN. I didn't mean to insult your testimony. I am just trying to get this all on the record.

Mr. FARRELL. We see no linkage at all, Mr. Chairman.

Mr. TAUZIN. Mr. Scharf?

Mr. SCHARF. I see no linkage and certainly our members have expressed that to me as we have discussed it in our process.

Mr. TAUZIN. Mr. Volkle?

Mr. VOLKLE. Yes, we do see some benefit in having the Coast Guard oversight. The law presently requires all persons employed on a vessel over 100 gross tons to have documents. We always thought there was a safety purpose behind that as opposed to just a paperwork burden.

The fact that the Coast Guard is able to do some background checks on people seems to us to have some effect on safety. I mean, it is not the same as a Coast Guard license, but that is not what the merchant mariners' licenses are supposed to do.

Mr. TAUZIN. Mr. Volkle raises a point, Captain McGowan. If it is just an ID, why is it required for seamen on vessels over 100 thousand tons right now?

Mr. MCGOWAN. The best way I can answer that, Mr. Chairman, is that, traditionally, this is an entry level license. It is an ID. You get the background check and you will be getting a national driver check for alcohol. That is it. However, once the person gets that license traditionally on the deeper sea side of the seagoing, they will increase their training, experience and qualifications and get higher level endorsements on it.

For instance, I am looking at one for an engineer. He started off as a wiper. Then, through experience and training, he got the endorsement from the Coast Guard for deck engineer, junior engineer and refrigeration engineer. Those latter three definitely could be linked to preventing casualties and definitely do involve some professional experience.

Mr. TAUZIN. So the mariner's document is more closely tied to the traditional roles aboard a vessel and the employment opportunities that lie above the entry level than it may be to these new nontraditional roles that we discussed today, the croupiers and the waitresses and those who will be attending to passengers on board these gambling ships, is that correct?

Mr. MCGOWAN. Precisely. And the closest parallel that there are not too many left operating, Mr. Chairman, are U.S. passenger liners. Those types of jobs on those vessels normally were listed as persons in addition to the crew is the category that was created for them. They were not required to be documented.

Mr. TAUZIN. So tradition actually created a differentiation between those classes of employees.

Mr. Sacco?

Mr. SACCO. I just want to add one other point and that is how many undocumented workers that work aboard intercoastal and river equipment barges, how many of them hold a lifeboat ticket? That is a big question.

Mr. TAUZIN. Captain McGowan?

Mr. MCGOWAN. I don't know. I would assume very few, but I am not too familiar with any of the tugs and barges that are equipped with lifeboats either.

Mr. TAUZIN. Mr. Farrell?

Mr. FARRELL. I don't know of any lifeboats on our vessels, barges or tow boats.

Mr. TAUZIN. Anyone else?

Mr. VOLKLE. As a general rule, barges don't have lifeboats. We have life rafts, and there are some requirements. But they don't really kick in until qualification for AB tickets.

Certainly, croupiers, dancers and whatnot, there may not be any relationship to safety. But for members of the crew—I mean, whether you are on a tugboat or a deep sea vessel—I mean, on our tugboats people start out as deck hands and go to, theoretically, to mate or master or start out as an oiler and go on to get those endorsements on their licenses. I think that would be true on others, I assume.

Mr. TAUZIN. Maritrans currently, as you pointed out, requires documents. Do you have any dancers and croupiers?

Mr. VOLKLE. No. Although the way the industry is going these days we may convert some of our barges into river boat gambling casinos. All we are is a tugboat company with a petroleum barge.

Mr. TAUZIN. I just wanted to make that point that you don't have those classes of workers right now.

Mr. VOLKLE. No, we just have crew members.

Mr. TAUZIN. Mr. Sacco.

Mr. SACCO. Mr. Chairman, again speaking from a standpoint of safety, the industry is expanding out there with the addition now of all the big river boats being built. Again, I asked that question

specifically about lifeboat tickets, lifeboat stations. We are going to find as the equipment and the boats get bigger and you have passengers aboard all these vessels what happens to those people who are not specifically trained for lifeboat training? That is entry level. It is also a major factor aboard all vessels.

Mr. TAUZIN. Under OPA-90, aren't those individuals going to be classified as safety related, Captain McGowan? Aren't they going to be required to be checked for drug use and, apparently, under the license checked once you get installed if there are lifeboat stations on these new passenger vessels?

Mr. MCGOWAN. It is not linked, Mr. Chairman, as far as OPA-90 is concerned. OPA-90 did enhance the requirements for drug and alcohol checks for tanker men so people associate it with oil transfers as well as making it a normal course of our check for anyone holding a license or a document.

Mr. TAUZIN. There are separate rules for passenger vessels regarding lifeboats and stations and safety. Perhaps it would be good to have those, again, summarized in the comments you make for us so we can get a clear picture of this.

Thank you very much, gentlemen. We have not only a difference of opinion as to whether or not this bill is safety related—you have a strong difference on that at the table. But we also have a strong difference of opinion as to who H.R. 1915 covers and who it should cover. We have at least explored two new avenues for discussion that perhaps were not thoroughly discussed last year.

Let me again state for the record that I don't know how some subcommittee Chairs work, but this subcommittee Chair has always had a policy that if there is substantial interest in a bill I don't stand in the way of it. We intend to hold a markup hearing on this bill because of substantial interest expressed by not only the Chairman of the full committee but a significant number of other Members. We will schedule that markup probably at our first markup date which is, I think, the 21st of September. So look for this on the 21st of September agenda.

If any of you have further information you want to submit for the record before that markup, we would deeply appreciate it, particularly, Captain McGowan, the request for documentation on your statistics made by Mr. Laughlin. We will keep the record open for several weeks for the submission of that information.

Gentlemen, thank you very much. We appreciate your very candid remarks today, as always, and we appreciate seeing you again.

This hearing stands adjourned.

[Whereupon, at 3:45 p.m., the Subcommittee was adjourned; and the following was submitted for the record:]

I

103D CONGRESS
1ST SESSION

H. R. 1915

To amend title 46, United States Code, to require merchant mariners' documents for certain seamen.

IN THE HOUSE OF REPRESENTATIVES

APRIL 28, 1993

Mr. STUDDS introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

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A BILL

To amend title 46, United States Code, to require merchant mariners' documents for certain seamen.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. MERCHANT MARINERS' DOCUMENTS REQUIRED.

Section 8701(a) of title 46, United States Code, is amended—

(1) by striking "100" and substituting "5";

(2) in paragraph (1), by striking "a vessel operating only on rivers and lakes (except the Great

Lakes);" and substituting "a small passenger vessel, or an uninspected passenger vessel;"; and

(3) by striking paragraph (2), and by redesignating the subsequent paragraphs accordingly.

SEC. 2. USER FEE EXEMPTION AND PRIVACY OF INFORMATION.

(a) The Secretary of Transportation may not collect a fee or charge under section 2110 of title 46, United States Code, for any service related to a merchant mariner's document required to be obtained under this Act.

(b) The Secretary may not make available to a member of the public any personal information concerning an individual required to obtain a merchant mariner's document under this Act.

SEC. 3. EFFECTIVE DATE.

The amendments made by this Act are effective two years after the date of enactment of this Act.

○

ONE HUNDRED THIRD CONGRESS

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U.S. House of Representatives
Committee on
Merchant Marine and Fisheries
Room 1334, Longworth House Office Building
Washington, DC 20515-6230

BACKGROUND MEMORANDUM

TO: MEMBERS, SUBCOMMITTEE ON COAST GUARD AND NAVIGATION

FROM: SUBCOMMITTEE STAFF

DATE: SEPTEMBER 3, 1993

RE: HEARING ON H.R. 1915, A BILL TO AMEND TITLE 46, U.S. CODE, TO REQUIRE MERCHANT MARINERS' DOCUMENTS FOR SEAMEN SERVING ABOARD INLAND VESSELS

On Wednesday, September 8, 1993, at 2:00 p.m. in Room 1334 Longworth House Office Building, the Subcommittee on Coast Guard and Navigation will conduct a hearing on a bill to expand the types of vessels required to carry documented mariners.

Representatives from the United States Coast Guard, Seafarers International Union, Passenger Vessel Association, Offshore Marine Service Association, and American Waterways Operators have been invited to testify. In addition, written testimony has been requested from several other labor and industry organizations.

Background

H.R. 1915 was introduced by Chairman Gerry Studds on April 28, 1993, and currently has twenty-five cosponsors. The bill will add inland tugs and barges, inland passenger vessels, and offshore supply vessels to the types of vessels already required to carry documented mariners.

This proposal makes several changes to 46 U.S.C. 8701, regarding the types of vessels required to carry documented mariners. First, it would require crew members on vessels of five gross tons or more to be documented mariners. The current threshold is 100 gross tons. Second, it exempts small passenger vessels and uninspected passenger vessels from this requirement. Third, it directs the Coast Guard not to collect fees for issuing these documents and it prohibits the release of any personal information about an individual required to obtain a document.

To obtain a merchant mariner's document, an individual must: (1) appear in person at one of the 17 Coast Guard Regional Examination Centers, (2) provide proof of citizenship or lawful admittance to the U.S. for permanent residence, (3) provide a letter of commitment of employment or evidence of prior military sea service, (4) provide fingerprints for an FBI criminal record check, and (5) make available information on the National Driver's Register (NDR). Only drug or drunk driving convictions can be used to deny a document to an otherwise qualified individual.

The Coast Guard can revoke or suspend an individual's document when the individual commits an act of incompetence, misconduct, or negligence. A document may not be renewed if the individual is convicted of driving while intoxicated or a drug offense.

Barges and towboats on inland waterways carry an extensive variety of cargo from farm products to hazardous substances. It has been estimated that there are 3,293 tugs; 23,124 dry cargo barges; and 3,239 tank barges operating on the inland waterways.

H.R. 1915 would apply to about twenty-five passenger vessels in excess of 100 gross tons operating on the inland waterways. In addition, approximately eighty gambling vessels are under construction or being scheduled for construction.

Issues

Proponents of the bill believe that requiring tugs, towboats, barges, and inland passenger vessels to carry documented seamen will increase navigational safety. Comprehensive documentation requirements would ensure that individuals employed on the inland waterways would have undergone criminal record checks and mandatory drug testing.

Opponents of the bill maintain that deckhands, cooks, entertainers, casino workers, and hotel service employees are not responsible for the navigation of a vessel and therefore documenting these workers will not contribute to safer operating conditions on the inland waterways. They also contend that current drug testing practices are sufficient. In addition, there is concern that documentation requirements could reduce the number of available employees.

The Subcommittee has asked the Coast Guard to estimate the additional work load and cost of implementing the documentation requirements contained in H.R. 1915.

Contacts

Subcommittee majority: Jim Adams (6-3587)
Full Committee majority: Lee Crockett (6-3500)
Subcommittee minority: Ed Lee (6-3492)

U.S. Department of Transportation
United States Coast Guard

Commandant
United States Coast Guard

Washington, DC 20593
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DEPARTMENT OF TRANSPORTATION

U.S. COAST GUARD

STATEMENT OF CAPTAIN JOHN F. McGOWAN

ON PROPOSED LEGISLATION AFFECTING MERCHANT MARINER'S DOCUMENTS

BEFORE THE

SUBCOMMITTEE ON COAST GUARD AND NAVIGATION

COMMITTEE ON MERCHANT MARINE AND FISHERIES

HOUSE OF REPRESENTATIVES

SEPTEMBER 8, 1993

DEPARTMENT OF TRANSPORTATION

U.S. COAST GUARD

STATEMENT OF CAPTAIN JOHN F. McGOWAN

ON PROPOSED LEGISLATION AFFECTING MERCHANT MARINER'S DOCUMENTS

BEFORE THE

SUBCOMMITTEE ON COAST GUARD AND NAVIGATION

COMMITTEE ON MERCHANT MARINE AND FISHERIES

HOUSE OF REPRESENTATIVES

SEPTEMBER 8, 1993

CAPTAIN JOHN F. McGOWAN, U.S. COAST GUARD

Captain Jack McGowan graduated from the U.S. Coast Guard Academy in 1969 and served aboard the Coast Guard Cutter TAMAROA departing as Operations Officer in 1971. He then served as Commanding Officer of the Coast Guard LORAN Station Cape Atholl, Greenland followed by duty in the Marine Safety Office San Francisco, California. He pursued a Masters program at the Massachusetts Institute of Technology and received the Professional Degree of Ocean Engineer as well as a Masters Degree in Shipbuilding and Shipbuilding Management. In 1976 he was assigned to the Coast Guard Merchant Marine Technical Office in New Orleans, LA. In 1980 he received orders to the Office of Merchant Marine Safety, Merchant Marine Technical Division at Coast Guard Headquarters. While at Coast Guard Headquarters, Captain McGowan served on a variety of delegations to the International Maritime Organization including the Bulk Hazardous Chemical Sub-Committee. Captain McGowan was transferred to the Inspection Division of the Marine Inspection Office, New York in 1985 and finished his tour as Chief, Investigations Division. He assumed the duties as Executive Officer at the Support Center Governors Island, New York in 1987. Captain McGowan served in this capacity until assuming command of the Marine Safety Office (MSO) Portland, Maine in July 1989. He began his current assignment in 1992, as Chief, Merchant Vessel Personnel Division, Office of Marine Safety, Security and Environmental Protection, Coast Guard Headquarters.

Captain McGowan has been awarded the Coast Guard Meritorious Service Medal, the Coast Guard Commendation Medal (three awards), the Coast Guard Achievement Medal (two awards), the Coast Guard Letter of Commendation Ribbon, the Coast Guard Unit Commendation Ribbon and the Coast Guard Special Operations Service Ribbon. Captain McGowan formed the Maine and New Hampshire Port Safety Forum which received the Gulf of Maine Visionary Award for 1991. The Forum was again recognized in 1992 by the President's Council on Management Improvement. MSO Portland became the first Coast Guard and Department of Transportation unit to receive the Council's award for Management Excellence. Captain McGowan was named the 1992 Maritime Person of the Year by the Propellor Club of the Port of Portland.

Captain McGowan is a Registered Professional Engineer and an active member of the Society of Naval Architects and Marine Engineers, the Coast Guard Academy Alumni and Massachusetts Institute of Technology Alumni Associations.

Captain McGowan and his wife, Hennie, are both originally from Connecticut. They are the proud parents of five children: Chris, Kate, Heather, Ben and Emily.

STATEMENT OF
CAPTAIN JOHN F. McGOWAN
ON PROPOSED LEGISLATION AFFECTING MERCHANT MARINER'S DOCUMENTS
BEFORE THE
SUBCOMMITTEE ON COAST GUARD AND NAVIGATION
COMMITTEE ON MERCHANT MARINE AND FISHERIES
HOUSE OF REPRESENTATIVES
SEPTEMBER 8, 1993

Good morning, Mr. Chairman and distinguished members of the Subcommittee. It is a pleasure for me to appear before you today to discuss a proposed bill concerning merchant mariner documentation requirements for merchant seamen employed on vessels engaged in trade in several maritime industries.

Title 46 U.S. Code (U.S.C), Section 8701, requires seamen aboard U.S. merchant vessels of at least 100 gross tons to hold merchant mariner's documents, except on vessels operating only on the navigable rivers and lakes of the United States, other than the Great Lakes. Currently, individuals serving on inland towing vessels, on harbor or ocean tugs of less than 100 gross tons, and passenger vessels over 100 gross tons operating on rivers and lakes are not required to hold a merchant mariner's document.

However, all towing vessels of 26 feet in length or larger, regardless of tonnage or where they operate, must be under the control of a licensed master, mate, or operator of uninspected towing vessels.

H.R. 1915 would revise 46 U.S.C. 8701 to require seamen on merchant vessels of at least 5 gross tons to hold merchant

mariner's documents. It would eliminate current exemptions for barges, vessels operating on rivers and lakes, but add an exemption for small passenger vessels. The bill's impact would essentially be focused on seamen working in the inland towing industry and is intended to enhance safety by subjecting these seamen to drug testing and criminal records checks. The bill would also impact on passenger vessels over 100 gross tons operating on rivers and lakes of the United States and small Offshore Supply Vessels.

All seamen on towing vessels are currently required to undergo pre-employment drug testing, are subject to reasonable cause and post-accident drug testing, and are also subject to random drug testing if they perform functions or duties directly related to the operation of the vessel.

Documented seamen seeking endorsements for qualified ratings such as Able Seaman, Qualified Member of the Engineering Department (QMED), or Tankerman are subject to a additional drug test to which undocumented seamen are not; they must submit to periodic drug tests as part of required physical examinations.

Under Coast Guard regulations, applicants for an original merchant mariner's document must:

- Appear in person at a licensing office and submit a completed application form;

- Provide proof of citizenship or evidence from the Immigration and Naturalization Service of lawful admittance to the U.S.;
- Provide a letter of commitment of employment or evidence of prior military sea service; and
- Provide fingerprints for an FBI Criminal Record Check.

Current rulemaking activity to implement provisions of the Oil Pollution Act of 1990 (OPA-90) will also require applicants to make available National Driver Register information related to certain offenses committed by the individual.

OPA-90 also instituted a five-year period of validity for merchant mariner's documents. Therefore, all seamen holding merchant mariner's documents will be required to apply for renewal of their documents. Applicants for renewal will be required to:

- Complete an application form, which includes a required statement by the seaman identifying any convictions of violations of drug laws or drug use by the individual;
- Make available updated National Driver Register information; and
- Provide proof of physical fitness if the applicant holds an endorsement for a qualified rating.

By requiring seamen on virtually all towing vessels to obtain merchant mariner's documents, H.R. 1915 would accomplish the following:

- Make available criminal record information and National Driver Register information for all previously unlicensed and undocumented towing vessel crewmembers when they apply for their original document; and
- Provide sanctions for acts of negligence, misconduct, and violations of law or regulation committed by these seamen through the Coast Guard's authority to suspend or revoke a merchant mariner's document. Currently, unlicensed or undocumented seamen discharged for drug use or other offenses could obtain a job on another towing vessel by presentation of a certifying statement indicating the individual does not use illegal drugs.

Having reviewed the history of accidents in this target group, it is the Coast Guard's position that H.R. 1915 will provide no significant enhancement to safety in the maritime industry. Our statistics indicate that almost 60 percent of the reported towing vessel accidents were caused by personnel error. However, more than 90 percent of all towing vessel accidents involving personnel error occurred on vessels with licensed individuals in charge of operating the vessel. Most of these accidents involved vessel collisions, collisions with bridges, or vessel groundings. Therefore, it is far more likely that the vast majority of the personnel errors contributing to accidents were caused by

individuals already licensed by the Coast Guard, who are in control of the vessel, rather than by the undocumented seamen on these towing vessels. The remaining percentage of the casualties occurred while a licensed person was not required to be aboard, such as while the vessel was moored, not in operation or in lay-up status.

With respect to pollution incidents involving personnel error, the persons in charge of oil and hazardous material transfer operations are required to be either licensed or documented. Thus, they are already subject to the requirements which this bill would impose on the towing industry.

In summary, we find no evidence to suggest there would be an increase in safety or in pollution prevention on vessels which would be subject to this bill.

The provisions of H.R. 1915 would also result in a significant economic impact on the inland towing and barge industry, passenger vessels over 100 gross tons operating on rivers and lakes, and several other vessel classes, in terms of direct operational expenses, as well as user fees resulting from the additional documentation requirements for the crewmembers on towing vessels. This legislation also impacts Coast Guard resources required to process applications and maintain the records on the additional mariners. If H.R. 1915 is enacted, we estimate issuing merchant mariner's documents to an additional

30,000 mariners per year, requiring 13 additional Coast Guard personnel at a cost of approximately $470,000 per year. The cost of FBI record checks would be $17 per mariner for an estimated cost of $510,000 per year. There would be a user fee of $35 per original issuance and each renewal for estimated receipts of $1 million. We do not believe that the benefits are commensurate with the costs. The Coast Guard, therefore, encourages the Committee and Congress to fully explore these impacts, as well as the expected benefits of this proposed legislation before changing the existing law.

Thank you Mr. Chairman. I would be pleased to answer questions at this time.

TESTIMONY OF THE

SEAFARERS INTERNATIONAL UNION

OF NORTH AMERICA, AFL-CIO

BEFORE THE

SUBCOMMITTEE ON COAST GUARD

AND NAVIGATION

COMMITTEE ON MERCHANT MARINE AND FISHERIES

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, D.C.

H.R. 1915, MARINER'S DOCUMENTATION

SEPTEMBER 8, 1993

Mr. Chairman and Members of the Subcommittee:

I am Joseph Sacco, Executive Vice President of the Seafarers International Union of North America, AFL-CIO, representing thousands of seamen and boatmen employed on U.S.-flag vessels engaged in the international and domestic trades. I appreciate the opportunity to testify in strong support of H.R. 1915, introduced by Merchant Marine and Fisheries Committee Chairman Gerry Studds on April 28. This is indeed a bill to improve the safety of inland tugs, towboats and barges and to provide a safe operating environment on the nation's lakes and rivers.

Current law prohibits the employment of merchant mariners on vessels of 100 gross tons or over if the individual does not hold a merchant mariners document. However, the law specifically exempts certain vessels and barges from this requirement including vessels operating on rivers and lakes. H.R. 1915 would require mariners employed on vessels over five gross tons, including tugs and tows and offshore supply vessels, to obtain merchant mariner documents as a basis for employment. As a residual effect, the bill would extend Coast Guard jurisdiction over thousands of boatmen over whom there is currently no oversight by the agency and would make it easier for employers to determine the calibre and safety risks of potential employees.

Mr. Chairman, a similar bill was passed by the House by voice vote last September; unfortunately, the Senate failed to take action on the bill prior to the adjournment of the 102nd Congress. As you may recall, the SIU submitted extensive testimony and supporting documentation on the need for such legislation at a hearing held by this Subcommittee on this issue in March 1992. It is not my intent to reiterate past testimony; however, I will briefly reemphasize certain key points in that statement today. The SIU has carefully considered the rationale expressed during the March hearing opposing the documentation proposal. Those concerns have not caused us to alter our position; in fact, we feel even stronger than ever that legislation requiring the documentation of personnel employed on tugs, tows and barges under 100 gross tons is needed. The SIU continues to maintain that safety dictates the enactment of H.R. 1915.

Numerous studies have shown that 50 to 80 percent of commercial vessel accidents have human factor-related causes resulting in hundreds of millions of dollars in damage and innumerable deaths and injuries. As a result, for the last several years, increasing focus and importance has been placed on the human factor and its relation to marine safety, both in international and domestic forums.

Under the umbrella of the International Maritime Organization, a number of committees have been instructed to maintain the agenda item of human factors as a major consideration in its process to develop rules, standards and guidelines. Further, several marine advisory committees under the auspices of the Department of Transportation list human factors as items for their consideration. The Coast Guard itself has advocated a number of projects and studies dealing with the human factor in the maritime sector, focusing on areas including, but not limited to, manning, qualification and training, physical standards, fatigue, and work-hour limits. According to the Coast Guard, the objectives of these studies is first, to develop a total system approach to the study of the marine system to understand the human factors that limit performance and lead to marine casualties; and, second to apply that knowledge to improve design, training, staffing, licensing, and operation procedures with the ultimate goal of reducing loss of life, property and environmental damage that have human factor-related causes.

The SIU maintains that one necessary ingredient to reaching that ultimate goal is the documentation of approximately 30,000 individuals who earn their livelihoods aboard tugs, tows, and barges operating on the nearly 26,000 miles of the nation's river and lake waterway system. As noted, these individuals are not required by law to obtain merchant mariner documents as a condition of employment and, as a result, escape Coast Guard inquiries required to obtain this document. For example, to obtain a merchant mariners document, which is a form of identification issued by the agency, the applicant is subject to an FBI check and review of criminal records and, as a result of the Oil Pollution Act

of 1990, must make available any information contained in the National Drivers Register related to a driving offense pertaining to alcohol. A merchant mariners document is denied by the Coast Guard if within 10 years prior to the date of the filing of the application, the applicant has been convicted in a court of a narcotics violation, unless the individual has submitted evidence to the agency to reasonably warrant the conclusion that he is no longer involved with or associated with narcotics and is suitable for employment.

The merchant mariners document is much more than solely a form of identification. It is a key indication that the holder has satisfied minimal scrutiny by the Coast Guard for an initial document and has remained in good stead, since the document is subject to suspension and revocation on various grounds. For example, documents may be suspended or revoked, if when acting under the authority of the document, the individual violates or fails to comply with laws or regulations intended to promote marine safety or protect navigable waters; has committed an act of incompetence, misconduct or negligence; is convicted of certain offenses; tests positive for an illegal drug; or has been convicted of an offense described in the National Driver Register Act, including driving while intoxicated. Subsequently, a prospective employer can be assured that a boatman holding a merchant mariners document is suitable for employment.

Unfortunately, as the law currently stands, without such a document, it is possible for someone who is deemed unacceptable by the Coast Guard or who has his document suspended or revoked to easily seek and gain employment in that sector of the industry where such a document is not required. Therefore, without a mandated requirement that certain records of a prospective employee be checked, an individual could leave one segment of the industry and seek employment in a less regulated segment. Or even in the less regulated segment of the industry, an individual who is denied employment for failing a drug test could temporarily clean up his act and easily move to another company, for without documentation any previous record would be difficult to trace.

Expanding the documentation law to include personnel onboard tugs and tows on the lakes and rivers will control the calibre of mariners that are employed in this sector and will help eliminate unsuitable candidates for employment as mariners who may be a hazard to themselves, their shipmates and fellow boatmen, the environment, and the communities along the rivers at large. Enactment of H.R. 1915 will enable the Coast Guard to remove unfit documented seamen working on inland tugs or towboats for cause. This is something that the agency cannot do as the documentation law is presently written. In fact, in response to a question during the 1992 hearing, the Coast Guard acknowledged that expanding the documentation requirement will afford the agency oversight over boatmen employed in this sector.

Further, in a final rule published in the *Federal Register* on March 19, 1993, concerning user fees, the Coast Guard also acknowledges that "its marine licensing program serves to indirectly enhance general public safety and to protect the environment on or near U.S. waters through establishment of minimum qualification requirements for professional mariners." In its discussion concerning user fees, the agency continues that the licensing program "ensures that mariners possess certain qualifications in order to be eligible for the license, certificate of registry, or MMD...The Coast Guard licensing program assures mariners that others they work alongside in the industry meet certain basic requirements such as age and citizenship, and in most cases, that they meet minimum experience or training requirements, and have passed a professional examination. Also, through background and criminal checks...certain persons are excluded from the industry...Though they are less tangible, there are special benefits related to personal security and peace of mind of the individual mariner. The Coast Guard does serve as a professional licensing body which should give a degree of assurance to individual mariners concerning other mariners who work for them and around them."

In our previous testimony, the SIU painted a picture of the environment in which these tugs and tows ply, the extremely significant portion of U.S. domestic cargoes that are moved by the barge and towing industries, the expansive variety of cargoes including hazardous and combustible products and materials, the populous communities along the inland waterways, and the hundreds of small towns relying on a safe waterway system for their very existence. In fact, in the last two months, this environment was the unfortunate focus of national and international attention as the inland rivers roared unmercifully over and through man-made levies and sandbag reinforcements, devastating all that they touched. This disaster brought to mind once again the extreme volatility of the river system.

Yet, there are crews on approximately 3,000 tugs, 23,000 dry cargo barges, and 3,000 tank barges operating on the inland waterways that are challenged not only by the erratic river systems and their currents but also by the technology and advances in the vessels they man and the dangers inherent in the many cargoes transported. Given the nature of the product carried, the large population centers on the rivers paths, and the unpredictability of the rivers themselves, it is ludicrous that within this large segment of waterborne transportation, there are personnel in the industry who are not required by law to meet minimal criteria similar to that required of deepsea personnel. The protection of the environment and the public interest in general warrant and expect more. They expect and should receive the transportation of commodities by vessels operated by documented and licensed crews meeting minimal governmental criteria.

It is indeed unfortunate that opponents of the bill choose to focus on the economic burden the measure may place on their industry in lieu of the safety benefits it will impart and continue to question the need to document deckhands, cooks and engineers onboard certain tugs, tows, and barges. Although opponents of this legislation cite that deckhands do not exercise, in any manner, operational control of any aspect of the vessel operations, the SIU would like to point out that a licensed tug and tow operator would be hard pressed to navigate the vessel and effectively respond to emergencies such as fire, flooding, medical emergencies, etc., without the assistance of trained and qualified deckhands. It is important to stress that a licensed operator does not function in a vacuum but is dependent upon his crew for their assistance in many vessel functions as are members of the crew dependent upon one another.

In fact, the relationship between safety and crew responsibilities was aptly expressed by the American Waterway Operators in its filing three years ago on the Coast Guard's drug testing regulations. "All crewmembers aboard commercial towing are in safety-sensitive positions and have safety-related positions" and that the responsibilities and functions of deckhands "effect the safe navigation and operation of the vessel." The SIU fully agrees with this assessment and believes that their statement reinforces the need for all personnel on these vessels to be documented.

It was further argued during last year's hearing that documentation is not a priority issue but an unnecessary expense at a time when the Coast Guard's operating budget has been cut. We are all aware of the tight budget conditions facing not only the Coast Guard but other government agencies. Certainly, the Coast Guard's budget is streamlined and may not meet all of the demands put on agency as a result of mandated missions and responsibilities. In fact, the agency is looking into a more efficient management system where resources can be more productively expended. However, I suggest that protecting life, property, the environment, and the communities along the rivers from potential oil spills or other catastrophic accidents is certainly a priority and funding for this purpose a prudent investment which will yield an impressive rate of return.

Mr. Chairman, the issue before this Subcommittee today is whether to make the nation's inland waterways and shores as safe as humanly possible from vessel spills, collisions, and groundings. It is not a question of expenditure but a matter of safety and protection of the marine environment. This must remain our overriding factor; certainly,

the protection of life and property is not an unnecessary expenditure. The number of towboat casualties have been significant during the period from 1981 through 1990. According to the Coast Guard's data base, casualties involving towboats under 300 gross tons numbered 8,242 of which 5,047 or 62 percent were attributed to personnel cause. As defined by the agency, personnel causes include such factors as inattention to duty, intoxication, error in judgement, lack of knowledge, lack of training, lack of experience, operator error, fatigue, stress, improper safety precautions, failure to comply with rules, regulations and procedures, improper loading, cargo stowage, securing, mooring, and towing. Further, of the accidents attributed to personnel cause, 82 percent resulted in groundings and collisions.

There are those who would have you believe that these figures are meaningless since the statistics do not differentiate in the percentage caused by documented versus undocumented personnel. The SIU contends that these figures indicate a significant accident rate, irrespective of fault, and, therefore, should not be summarily dismissed. Further, the Coast Guard has referred to data which showed that over 93 percent of all towing vessel casualties involving personnel error occurred on vessels with a licensed individual in charge. The presence of a licensed operator in charge aboard a vessel does not eradicate the fact that the cause of these accidents can indeed be attributed to either a documented or undocumented individual. And, although opponents of the H.R. 1915 characterize deckhands as laborers whose job description calls for following directions given by trained and licensed superiors and who learn and advance through on the job training, these individuals as well as the licensed personnel can easily fall within the above-enumerated classifications for the causes of accidents.

The SIU believes that these casualties are indicative of the need to assure all users of the inland waterways and the communities along the rivers that the mariners who man the commercial craft which share these waterways are uniformly examined by the Coast Guard for the positions they hold. In the deepsea sector where all members of the crew are either licensed or documented, the accident rate due to the human factor is significantly less. For example, among the 698 vessels involved in accidents in this same period, 31 percent were attributed to the human factor.

Relative to the proposal by some that Congress await the result of the Study on Tanker Navigation Safety Standards mandated by the Oil Pollution Act of 1990 before acting on a documentation bill, the SIU contends that this study has absolutely nothing to do with crews employed on tugs in the inland waterways. OPA and the conference report accompanying the Act are very clear in its direction -- the focus of the study is on the crews of tankers. The conferees called for a "comprehensive study...[requiring] specific examination of issues related to tanker crews." As noted by the conferees, "The findings of such a study will greatly contribute to Congressional consideration of international conventions and agreements, as well as legislative and regulatory actions that may be needed to improve the safety of tanker navigation." Postponement of this legislation would be nothing more than a dangerous delaying tactic.

Lastly, innuendo that the SIU has some ulterior motive for supporting H.R. 1915 is patently disclaimed and its underlying message strongly resented. The SIU represents both documented and undocumented personnel on the inland waterways and the fact that the legislation prohibits the Coast Guard to make available to a member of the public any personal information concerning the individual required to obtain a merchant mariners document should have muted any allegation. The SIU has been and will continue to be a strong advocate for safety, the safety of its members, the safety of vessels on which its members earn their livelihood, the safety of the environment, and the safety of the communities along the rivers' banks. This is the SIU's sole purpose in supporting and advocating the enactment of H.R. 1915.

H.R. 1915 will also require merchant mariner documents for personnel employed on offshore supply vessels. Some have maintained that there is no basis in fact to expand the requirement for merchant mariner documents for personnel onboard these

vessels. The SIU totally disagrees with this position. If the purpose of H.R. 1915 is to truly provide a safer operating environment, then these individuals must be covered. Although offshore supply vessels may not be engaged in the transportation of petroleum or hazardous products, the approximately 1,080 crewboats do not exist in a vacuum. These vessels interact with other vessels and share and traverse the same waterways. An undocumented individual employed on an offshore supply vessel, therefore, may pose a threat to the environment and may be a direct or indirect cause of a major mishap. Accidents due to personnel error are not exclusive to boatmen employed on tugs and tows pushing or pulling oil or other hazardous cargoes. For this reason alone, these individuals should be documented.

In conclusion, to ensure a safe and ecologically sound transit of the nation's waterways by these commercial vessels and to protect our marine environment from the damage of avoidable oil or other hazardous cargo spills caused by collisions and/or groundings, the SIU recommends expeditious enactment of the legislation being considered today. This action would be an appropriate addendum to the goals and objectives of the Oil Pollution Act of 1990.

Hearings on Legislation

to Expand the Requirement for

Merchant Mariners Documents for

Personnel on Tugs, Towboats, and Barges (H.R. 1915)

Statement of Joseph Farrell

President of American Waterways Operators

Before the Subcommittee on Coast Guard and Navigation

Committee on Merchant Marine and Fisheries

U. S. House of Representatives

September 8, 1993

Chairman Tauzin, members of the Subcommittee, I am Joe Farrell and I am President of the American Waterways Operators (AWO). As you know, AWO is the national trade association representing the coastal and inland barge and towing industry, and the shipyards which build and service these vessels. Our industry provides over one half of the on-board jobs in the U.S. merchant marine.

We are here today to renew our previously successful efforts which defeated earlier attempts by maritime labor to add Merchant Mariners Document (MMD) requirements for entry-level crew personnel who serve as deckhands and cooks on towboats on the inland river system.

We object strenuously to what continues to drive the labor initiative to have Congress impose MMD requirements on the inland towing industry. We have attempted to evaluate the labor support for this legislation from a variety of perspectives. We, along with everyone not in the thrall of labor, can find no value in requiring MMDs for inland deckhands and cooks, nor any contribution which they would make to improving vessel or personnel safety. Indeed, such an initiative would only steepen the mountain of unnecessary government regulations.

<u>What are MMDs?</u>

MMDs are in fact administrative paperwork requirements not linked in any way to the holder's maritime knowledge, competence, or experience. More specifically, issuance of an MMD does not require *any* testing or demonstration of any minimum level of training, nor does it in any way certify navigational competence; what the process *does* require is that a prospective employee present himself at a Coast Guard location with the following:

- Evidence of U.S. citizenship or permanent resident status;
- Three unmounted, dull finish photographs of passport type;
- Letter of commitment of employment;
- Social Security card;
- Birth certificate;
- Submit to an FBI narcotic drug offence check; and,
- As now required under OPA, request his National Driver Register record be transmitted to the Coast Guard for review.

Obviously, the first five requirements are bureaucratic-paperwork in nature, requiring the applicant to expend time, money, and travel to a documentation center. And, while inland river deckhands today are not required to be run through an FBI narcotics check, he or she is required by law *to pass a pre-employment drug test*, is subject to random drug testing, as well as post casualty and for-cause testing. The existing drug testing regime appears to have worked well since its implementation in 1988. Drug use in the marine industry continues to decline -- so much so that the Department of Transportation is currently considering streamlining the existing drug testing regulations to reduce regulatory burdens on the industry. The National Driver Register check is to discover alcohol abuse. Alcohol is not permitted on our vessels. Requiring MMDs for deckhands is an unnecessary step in the wrong direction.

In addition, expanding MMD coverage would certainly serve to further overburden an already stressed Coast Guard mission agenda if these requirements were mandated for deckhands and cooks on the smaller inland fleet towboats as well as passenger vessels which are now targeted for coverage under H.R. 1915. During last year's subcommittee hearing, Coast Guard testimony indicated that the legislation would require an estimated 30,000 deckhands and cooks to go through the bureaucratic paperwork process required by enactment of this legislation, costing the government in excess of one-half million dollars. With passenger vessels now included in the legislation, the costs will obviously go up even higher.

With so much industry and government attention focused on how to increase personnel competence, we would naturally hope that labor's attention would reside here as well. However, *none* of the ongoing industry or government initiatives have identified the MMD as an important component of vessel or personnel safety. Attention to training for mariners at all levels is productive, and in this regard we note:

- First, that companies, recognizing the importance of well-trained, competent personnel, increasingly require training for their entry-level deck personnel. Some companies have established in-house training programs which employ a mix of classroom and on-board training; others send their new hires to outside institutions to be trained. A recent AWO survey found 17 separate deckhand training facilities now serving the needs of the barge and towing industry in the United States. Meanwhile, on-the-job training, a historical mainstay of marine industry training programs, remains widespread. Companies have taken these steps not in response to a government mandate, but in recognition of the importance of ensuring the competence of their personnel. Moreover, such training is provided regardless of whether an employee has an MMD.

- The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) is the principal international convention which governs standards of competence for deck personnel. The International Maritime Organization is currently engaged in an expedited review process aimed at modernizing and strengthening STCW standards by mid-1995. The U.S. Coast Guard has played and will play a principal role in that effort.

- The Towing Safety Advisory Committee, a congressionally-authorized advisory body to the Secretary of Transportation, has accepted and begun work on an analysis of training standards for entry-level personnel which the Coast Guard has asked it to pursue. An expert group of industry, labor, government and training personnel has been comprised to work on this task. Essentially, they have been asked to evaluate whether uniform entry-level training requirements make sense from a safety perspective and whether there is an appropriate governmental role in their establishment. They are currently conducting a comprehensive assessment of this matter and will report to the Coast Guard by year end on the value of entry-level training, its proposed content, and the regulatory mechanisms available for its implementation.

- Finally, OPA 90 requires the Coast Guard to conduct studies evaluating crew competence questions. These studies should answer fundamental questions which will provide the basis for sound policy judgments about how to ensure and enhance the competence of vessel crews. The Coast Guard has indicated that it will provide these reports to Congress in 1995.

The important point with respect to these four examples is that real work is being focused on where it belongs, unlike MMD legislation -- personnel competence. Moreover, taken together, these efforts are meant to make a real contribution to the enhancement of maritime safety. This, in our view, is where government, industry, and labor resources should be directed -- not at simplistic, time-consuming, administrative paperwork requirements which curtsey to labor and make no tangible contribution to ensuring marine safety.

We are also particularly concerned that "improving safety" is the rationale being cited for passage of this legislation, based upon the inference that our industry allows employees to operate vessels without any demonstration of their abilities or fitness for duty, and that somehow requiring MMDs for deckhands and cooks would solve the problem. In point of fact, as you know Mr. Chairman, those individuals who pilot and operate our fleets are *thoroughly trained and licensed* as required by existing statute and Coast Guard regulations. At a *minimum*, the required qualifications for an operator of a towing vessel are as follows:

- 21 years old;
- Three years of service, six months of which must be duty or training in the

wheelhouse and three months of which must be in the particular geographic locale for which application is made;

- Three months of required service must be performed within three years of application for license;
- Pass Coast Guard exam;
- Completion of an approved first aid course;
- Completion of an approved CPR course;
- Pass physical exam;
- U.S. Citizenship;
- Provide written recommendations concerning suitability for duty from recent marine employers and at least one from master of a vessel on which applicant has served;
- Pass Coast Guard fingerprint check; and,
- No convictions of dangerous drug offenses within three years of application (up to 10 years if facts or circumstances warrant); no history of usage of or addiction to a dangerous drug, unless applicant produces satisfactory evidence of cure.

Untrained and unqualified? Obviously not, and one need look no further than the overall excellent safety record of this industry as additional evidence of that fact. Government statistics support the assertion that this is the safest mode of transportation. And, as the Chairman knows, we are always seeking ways to improve our remarkable record for safety.

It should also be noted in this regard that the Coast Guard casualty statistics often used by proponents of this bill do not in fact support the need to require documentation for deckhands in order to improve safety. In point of fact, Coast Guard data does show that 93 percent of all towing vessel casualties involving "personnel error" occurred on vessels *with a licensed individual in charge*. Thus, it cannot fairly be represented that requiring MMDs for currently undocumented deckhands who perform no operational duties would favorably impact vessel casualty statistics.

So who are these vessel employees that are targeted by the proposed legislation for more government required documents? But for the fact that they work in the marine transport industry, they would otherwise be called laborers; on the water, we call them deckhands. These are the entry-level positions with duties that fit the unskilled category. As a deckhand, moreover, their activities by design generally require no previous experience in the industry and do not involve vessel safety-related decision making responsibilities. They learn through supervision, formal company training, and by on the job training. As they gain work experience and knowledge of navigational operations over time, however, many advance to positions of greater responsibility which indeed have licensing, certification, or documentation requirements which reflect increased operational decision making capabilities. Starting "at the bottom" in this and many other industries is still the norm and a proven way to acquire experience and knowledge. It is in fact this entry-level pool of workers that produces after years of experience and training many of our senior wheelhouse and company personnel.

Mr. Chairman, marine safety has been and will continue to be of utmost importance to the barge and towing industry. What is often forgotten in this and other debates in Congress is the fact that it is in our -- the industry's -- own self interest to maintain safe, efficient operations as we seek to reach the all too often elusive goal of making a profit. In the light of the enormous liability levels imposed not only by OPA, but also by the well-documented personal injury liability exposure we face under the Jones Act compensation provisions, to assume that we would somehow risk financial ruin in order to maintain our so called "undocumented" deckhand status is patently absurd. It is likewise equally without merit to propose that *all* employees in this or any other industrial sector -- no matter their duties be completely disconnected from operations -- must be caught up in the government's regulatory net in order to ensure that public safety is protected. Thank you.

Statement of the
Passenger Vessel Association
to the
Subcommittee on Coast Guard and Navigation
U.S. House of Representatives
on
H.R. 1915
September 8, 1993

Good afternoon, my name is Eric Scharf. I am Executive Director of the Passenger Vessel Association. On behalf of the Association, I am pleased to be here to discuss the bill H.R. 1915, which would amend current law to require all personnel on passenger vessels to carry merchant mariner documents, also called Z-cards.

As you know, the Passenger Vessel Association is the national trade association for the passenger vessel industry. Founded in 1973, PVA today represents more than 500 companies that own, operate and supply U.S. flag passenger vessels. These include dinner cruise ships, tour and excursion boats, car and passenger ferries, private charter boats, casino gaming vessels, domestic overnight cruise boats and environmental vessels. Member companies of the Association operate more than 1,200 vessels ranging in size from 7 to 4,000 passengers, and carried more than 80 million passengers in 1992. This is a figure, I might add, that is growing yearly.

The Board of Directors of PVA has asked me to express in the strongest terms our opposition to H.R. 1915. While an earlier version of the bill, H.R. 1373, would have exempted our industry from the purview of this unwarranted government mandate, H.R. 1915 would require all personnel onboard large passenger vessels - so-called H boats - to carry MMDs. This includes not just deckhands and vessel operating personnel, but all waiters, entertainers (including singers and dancers), chamber maids, and cooks. For the new generation of casino gaming vessels that are coming on line, many of which either cruise or are at anchor on the Mississippi River, the bill would force card dealers, croupiers, and other gaming personnel also to carry MMDs.

When President Bill Clinton took office he vowed a government that would work better, and make sense to the American people. This legislation, in our opinion, represents just the opposite. It is government regulation for no reason. Its costly requirements respond to no identifiable public need, either on the part of the government or the industries upon which it is imposed.

Proponents of the bill, we understand, claim a public safety need. But, to our knowledge, they have not documented or presented any evidence whatsoever of the need to which they routinely refer. They have cited no persistent problem in the operation of passenger vessels which requires the hand of government to correct. Even if an operating problem were identified, a MMD would fail to address it. Nothing in the process includes a demonstration of skill, qualification or knowledge about the job at hand. An individual with a valid MMD could prove to be a disaster on the boat. Conversely, years of experience show that many individuals without fancy licenses prove to be able, diligent and loyal employees. An MMD will not make that distinction.

In their pursuit of this bill, proponents conveniently fail to acknowledge the many safety training programs already sponsored by the companies which hire the personnel at issue. These programs are in place, on a voluntary basis, because no one - let me repeat no one - has a greater vested interest in the safe operation and integrity of a vessel than that vessel's owner. If an accident occurs, that owner is out of business - either temporarily or permanently.

The U.S. Coast Guard, which is charged with protecting the public safety on the waterways, has testified before this Subcommittee that it sees no public safety reason to

enact legislation such as H.R. 1915. Given that the Coast Guard pays close attention to the safe operation of these large, sophisticated passenger vessels, we find that assessment meaningful.

We also are not aware that any passenger vessel operating personnel have petitioned Congress to act because of concern over persistent safety problems. The fact is, marine safety will not be enhanced one iota by the passage of H.R. 1915. And the last thing most businessmen need - particularly at a time when budgets are shrinking - is the increased cost associated with the excessive and needless paperwork and record keeping which this bill would necessitate.

This is a cost that will not be borne by the private sector alone. Thousands of additional MMDs must be processed by the Coast Guard under this proposed bill. In the passenger vessel industry alone, we estimate that already some three to five thousand additional cards could be required. At a minimum of $52 a card, this means an additional $156,000 to $260,000, depending on the number processed. And these are not one-time issues. Moreover, as new large gaming vessels are certified, that number could more than double. Some see the potential fleet of gaming vessels employing up to 15,000 people just based on current law.

The cost of assuming this hugely expanded role in processing MMDs must be a concern to an agency that has seen its 1994 budget request cut almost $168 million so far by the House Appropriations Committee. At a time when budget pressures will force the Coast Guard to substantially reduce support for important communications and navigation systems, when funding for new fishing vessel safety initiatives and marine spill response standardization has been cut to zero, it is unfathomable that the Coast Guard would be forced to fund a program neither it nor industry wants or finds in the public interest.

Finally, we would ask you to consider the possible impact of this proposal on the pool of labor available to our owners, particularly in the summer. Most of the people who hold these jobs as deckhands, not to mention those who hold jobs completely unrelated to the vessel's operation, may not be willing to undergo the hassle and irritation of obtaining a government-mandated work permit, particularly when it is clear that the job will be very short term. These people have other options. The result may be that our search for the kind of people needed to make our businesses a success becomes longer and more difficult, with the turnover greater than it is now. No one involved in this debate can reasonably seek this outcome.

And so, to what end this legislation? The Coast Guard does not want it. The industries which would be affected do not want it. It flies in the face of everything this newly elected President has promised. And it makes the commitment of this Subcommittee to focus scarce public resources on true public necessities ring hollow.

This legislation should not go forward. We respectfully request that this Subcommittee see that it does not.

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TESTIMONY OF MARITRANS OPERATING PARTNERS L.P.
BEFORE THE SUBCOMMITTEE ON
COAST GUARD AND NAVIGATION
COMMITTEE ON MERCHANT MARINE AND FISHERIES
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON D.C.

H.R. 1915, MARINER's DOCUMENTATION
SEPTEMBER 8, 1993

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to testify on H.R. 1915, which would expand the requirement for merchant mariner documents to include personnel employed on tugs, towboats, and barges five gross tons and over.

I am Arthur J. Volkle, Jr., Associate General Counsel for Maritrans Operating Partners L.P.. Maritrans owns a fleet of approximately 35 U.S. flag towboats and petroleum barges, transporting oil products along the U.S. East and Gulf coasts. We are the largest independent maritime transporter of petroleum products in the U.S. coastwise trades.

Maritrans is fully committed to operating in a safe and environmentally sensitive manner. It comes as no surprise that most marine accidents are the result of personnel error, not equipment failure. Therefore, we believe that an emphasis on the qualifications and training of maritime personnel is essential.

We employ approximately 500 U.S. citizen seamen aboard our vessels. We require each one of them to have a merchant mariner document, whether or not required by law. For the most part, we also require anyone who serves as a mate or master of one of our vessels to have a Coast Guard license, rather than a towing vessel operator certificate, the minimum required by law, and many also are licensed first-class federal pilots.

We see H.R. 1915 as significantly contributing to the safety of maritime commerce. Conversely, it imposes only a minimal burden upon persons seeking maritime employment, a burden which we believe is amply justified.

A substantial portion of the petroleum and hazardous substances transported in the United States is transported by vessels which would be covered by this Act. Undocumented individuals employed on these vessels presently are not required to undergo routine Coast Guard screening as do seamen in other sectors, including a criminal record check and a review of the National Driver Register to determine if they have committed an alcohol or drug-related offense. These checks are required by the Oil Pollution Act of 1990. It must also be remembered that, even if not carrying hazardous substances, these vessels, if operated imprudently, threaten the safety of other vessels operating on the waterway; it makes little difference that all the crewmembers of a tanker are screened when the other vessel makes a wrong turn and causes a collision.

Theoretically, this bill will allow the Coast Guard to conduct checks on individuals seeking maritime employment, and will assure that those individuals are suitable for such employment. I emphasize the word "theoretically," because, as Maritrans recently discovered, the Coast Guard still is not performing checks of the National Driver Register before issuing mariners documents and licenses, despite the express mandate contained in the Oil Pollution Act of 1990 to do so. We believe that the Coast Guard should implement this mandate as soon as possible.

Finally, I would note our belief that U.S. seamen are, on the whole, among the most competent and best trained in the world. For that reason, the safety record of vessels operating in U.S. waters

is extremely high. The safety of maritime commerce in the navigable waters of the United States, as well as our national defense interest, is directly tied to the provisions of the Jones Act, which requires that vessels used in the coastwise trades be U.S. flag, and requires that individuals employed on U.S. flag vessels be U.S. citizens. This bill, and, indeed, most of the personnel and manning requirements imposed by Congress which contributes to the safe operation of vessels in U.S. waters, will become irrelevant should the requirements of the Jones Act be weakened. We are informed that negotiations presently underway regarding a European Energy Charter and the General Agreement on Tariffs and Trade (GATT), are addressing these cabotage restrictions, and we urge the Congress to reaffirm with the Administration its commitment to maintaining the inviolability of the Jones Act.

Thank you for the opportunity to present these comments.

TESTIMONY

OF THE

OFFSHORE MARINE SERVICE ASSOCIATION

September 17, 1993

The Offshore Marine Service Association (OMSA) is pleased to submit its testimony for the record of the Subcommittee on Coast Guard and Navigation hearing on H.R. 1915, which would amend Title 46, United States Code, to require merchant mariner's documents for certain seamen.

OMSA is a national trade association that represents over 270 companies that operate U.S. flag vessels, or provide services, supplies and equipment, in support of offshore oil and gas operations worldwide, including more than 400 specialized vessels of less than 100 gross tons.

OMSA maintains, with respect, that there is no basis in fact to expand the requirement for merchant mariner documents for personnel on offshore tugs, towboats, barges and small workboats.

The issuance of a merchant mariner document does not impart specific skills, training or experience to the recipient, particularly entry level ratings. Although provisions of OPA-90, regarding the issuance and renewal of Merchant Mariners' Documents, require the Coast

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Guard to verify that applicants have been subject to physical examinations, drug tests, etc., the offshore marine service industry has historically required thorough physical evaluations of prospective marine employees for safety and insurance reasons. Proponents of this bill have apparently overlooked the safety training programs of companies in the offshore marine service industry. Our industry aggressively promotes safety on board our vessels. As evidence of this, OMSA is pleased to note the results of its latest safety survey (1992) which demonstrates our industry's commitment to safety. Our industry safety survey reported a lost time incidence ratio of 1.81 (1.81 lost time accidents per 200,000 hours worked), a result that is superior to, or compares quite favorably with, any in the transportation industry. To our knowledge, there is no documented evidence that safety aboard our industry's vessels will be enhanced by expanding the requirements for Merchant Mariners' Documents to include crewmembers of small vessels.

The Subcommittee should be aware of initiatives regarding the training and competency of merchant mariners that are being actively pursued at this time: (1) The International Maritime Organization (IMO) is currently engaged in a comprehensive review of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) that will modernize and strengthen STCW standards by mid-1995. STCW is the principal international convention which governs standards of training and competency for marine personnel. The U.S. Coast Guard will have a principal role in this effort; and, (2) The Towing Safety Advisory Committee (TSAC), a congressionally-authorized advisory body to the Secretary of Transportation, is working on an analysis of training standards for entry-level personnel at the request of the Coast Guard. An expert

group of industry, labor, government and training personnel are currently working on this task. They have been tasked to evaluate the need and practicality of entry level training requirements, and whether there is an appropriate role for government in their development and implementation. The Task Group will submit its report to the Coast Guard by year end on the value of entry-level training, its proposed content, and the regulatory mechanisms available for its implementation.

The costs associated with this legislation will affect the Coast Guard, as well as individual employees and employers. In addition to the administrative costs, of $52 per document, incurred by the Coast Guard, incidental costs related to transportation, meals, lodging, wages, photographs, personnel administration, etc., are estimated to be $150 per employee. This will result in a cost of approximately $800,000 for the Offshore Marine Service industry alone. The total cost of this legislation, when considering passenger vessel and towing vessel employees, will be much greater.

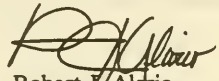
And then there is the enforcement problem. Are marine employees that receive a Merchant Mariners' Document, without being assessed a user fee for its issuance, restricted from working on other vessels, which currently require documentation, until the individual pays the user fee? This issue could potentially create administrative, legal and enforcement nightmares for the Coast Guard and vessel operators.

President Clinton has stated, repeatedly, that his Administration would reinvent government, to create a government that would work better, and make sense to the

American people. This bill, in our opinion, is inconsistent with the intent of the Clinton Administration - it is simply regulation for the sake of regulation.

Thank you for this opportunity to share our information and viewpoint. We would be pleased, if requested, to provide the Subcommittee with whatever additional assistance or information we can.

Sincerely,
OFFSHORE MARINE SERVICE ASSOCIATION



Robert J. Alario
President

Statement of

Crowley Maritime Corporation

Submitted in Connection With

A Hearing Held by the

Subcommittee on Coast Guard

and Navigation

on September 8, 1993

Concerning H.R. 1915, A Bill
To Require Merchant Mariners'
Documents for Seamen Serving
on Inland Vessels

Crowley Maritime Corporation appreciates this opportunity to submit comments in support of H.R. 1915, a bill to require merchant mariners' documents for certain seamen.

Crowley Maritime, founded over 100 years ago, is a privately-owned maritime enterprise operating in the domestic and international trades. The company, considered to be the third-largest U.S.-flag operator, owns or operates approximately 380 U.S.-flag vessels including container ships, ro/ro ships, tugs, barges, harbor ferries, salvage and other types of specialized vessels. In the domestic trade Crowley provides a wide range of coastal services as well as service to the noncontiguous areas of Alaska, Hawaii and Puerto Rico. We operate sporadically on the inland waterways of the United States.

H.R. 1915 would expand the number of seamen requiring merchant mariner documents (MMD's). Presently exempted from the requirement for MMD's are seamen on various classes of vessels such as those operating only on rivers and lakes (except the Great Lakes), barges, fishing vessels, fish tenders, fish processors, yachts, etc. Seamen on any vessels less than 100 gross tons are not required to have MMD's. H.R. 1915 would remove the exemption for vessels operating only on rivers and lakes and would change the vessel size threshold from 100 gross tons to five gross tons. The principal effect of these changes would be to require a large number of engineers, deckhands, and cooks on tugs and towboats on inland rivers, who are now exempted, to obtain MMD's.

Crowley Maritime's vessels generally are not exempt from the current requirement that all seamen have documentation. They do not operate exclusively in rivers and lakes and for the most part are larger than 100 gross tons. As a consequence, all of our seamen are required to have MMD's. We consider this to be beneficial and certainly not an onerous burden to the company and if a burden to the seaman, then a minimal one at best.

The principal benefit comes from the screening made before the document is issued or renewed. An FBI check is made, as well as a review of the National Driving Register to determine if there has been an alcohol-related driving offense. If the seaman subsequently is involved in an act of incompetence or misconduct or is found to be negligent, or is convicted of an offense described in the National Driving Register Act, his document can be suspended.

The process of applying for an MMD will reveal narcotics violations which can, under certain circumstances, prevent applicants from being issued a document.

These are critical issues for the safe operation of vessels. Safety and environmental protection, of course, are major concerns of companies. Lives of vessel crews and the general public as well as preservation of natural resources are at stake. Oil and chemicals are prominent cargoes carried on barges. Accidents involving such cargoes can be disastrous to the communities and

environment in proximity to the accidents.

Although Crowley's shipboard personnel are all documented, we're concerned, when we enter rivers such as the Columbia or the Mississippi, that the personnel on the vessels that share the rivers with us are also properly documented. The Merchant Mariners' Document can provide assurance that a reasonable check on seamen qualifications has been made.

We understand that a question has arisen as to whether entertainers and casino workers on the growing fleet of river gambling vessels would be required to obtain MMD's. The extent to which such persons would be subject to the MMD requirement should be determined after a careful analysis of the degree to which they will be required to assist in such activities as emergency ship evacuations.

In summary, we believe that H.R. 1915 is a rational and reasonable bill that should significantly assist in improving the level of safety in vessel operations on rivers and lakes. We urge its adoption.

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